INDEX
TO TRANSCRIPT OF RECORD.
Vol. 1 to 33.

IN THE

Supreme Court of the United States

No.

THE UNITED STATES OF AMERICA,
Appellants,

vs.

OBERLIN M. CARTER, LORENZO D. CARTER, I. STANTON CARTER, HORACE G. STONE, NATHANIEL C. SEARS, THE INTERNATIONAL AUDIT COMPANY, ROBERT NELSON, AND LYMAN E. COOLEY,
Appellees.

Appeal from the Circuit Court of Appeals of the United States for the Seventh Circuit.

ARRANGEMENT OF RECORD.

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100	4	1823	4	1820-24	Printed...	Letter, Feb. 7, '96, of House Committee
101	9	4246	4	1820-24	Printed...	Letter, April 21, '96, of Senate Committee.
101A	4	1824	4	1820-24	Printed...	Letter, April 23, '96, to Senate Committee.

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102	3	1393	4	1820-26	Printed...	Letter, Ch. Engrs. June 19, '96 to Carter to submit Project Exh. S. H.
103	9	4248	4	1818-26	Printed...	Letter, Carter Cf. Engrs. June 22, '96, Submitting Project Exp. C. S.
104	9	4252	4	1820-30	Printed...	Letter, Carter to Cf. Engrs. June 15, '97, Submitting Project Exp. C. S
105	3	1425	4	1820-31	Printed ..	Letter, Carter to Cf. Engrs. June 22, '96, Submitting Project Exp. S. H.
106	21	9634	4	1835-6	Printed...	Proposal, D.V. Howell, B.H. May 13, '89.
107	21	9631	4	1835-6	Printed...	Proposal, C. C. Ely, B. H. May 13, '89.
108	22	10003	4	1835-6	Printed...	Jetty Contr. 4037 B. H.
109	21	9822	4	1835-6	Printed...	Bond to Contr. 4037, B. H.
110	9	4254	4	1940-41	Printed...	Carter's report of Operations for Sep. 1893, S. H.
111	9	4257	4	1940-41	Printed...	Carter's report of Operations for Aug. 1893, S. H.
112	22	9921	4	1954	Printed...	Sup. Contr. 3282, J. F. Gaynor, Dec. 22, '86.
113 to 236				1060-76 1955-6-7 1958-59-60 1961-2-3		
342				1964-5-6		
344	....	Sent up	.....	1967-8-9	Originals..	Disbursing Checks.
355 to 399				1970-1-2 1973-4-5 1976-7-8-1979 2317-22 2349-49		
237	9	4261-5	4	1997-8	Printed...	Letter, Cf. Engs. Apr. 17, '97, as to Annual Report.
238	4	2001	4	2001	Printed...	Report of Operations Cooper Dam, 31-1896.
239	4	2002	4	2001-2	Printed...	Report of Operations, Cooper Oyster Bed, 1896.
240	4	2002	4	2002	Printed...	Report of Operations, Conant Repairs, 1896.
240-A	4	2003	4and9	2003-4167	Printed...	Report of Operations, Conant, 1896.
241	4	2003	4	2003-4	Printed...	Computation Garden Bk. T. Wall, Dec. 1896.
242	4	2004	4	2003-4	Printed	Computation S. H. work, Dec. 1896.
243	4	2005	4	2005-6	Printed...	Vou. 5, Jan'y. '97, Garden Bk. T. wall Dec. 1896.
244	4	2006	4	2006	Printed...	Report of Operations, S. H. Dec. '96, Carter, Dec. 1896.
245	4	2007	4	2006-7	Printed...	Report, Daniels, Pile work, Dam, 31, 1897.
246	4	2007	4	2007	Printed...	Report, Daniels, Pile work, Dam, 31, 1897.
247	4	2008	4	2007-8	Printed...	Report, Daniels, Pile work, Dam, 31, 1897.
248	4	2009	4	2008-9	Printed...	Computation S. H. work, Feb. 1897.
249	4	2009	4	2009	Printed...	Vou. 27 S. H. Feb. 1897, work.

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251	4	2011	4	2010-11	Printed...	Report, Daniels S. H. Dam 31, May, '97.
252	4	2011	4	2011	Printed...	Report, Keating S. H., Elba I. May, '97.
253	4	2011	4	2011	Printed...	Report, Keating, S. H. Elba I. May, '97.
254	4	2012	4	2011-12	Printed...	Computation S. H. Work, May, '97.
255	4	2012	4	2012	Printed...	Computation S. H. Work, May, 1897.
256	4	2013	4	2013	Printed...	Vou. 7, S. H., May, '97 Work.
257	4	2013	4	2013	Printed...	Vou. 21, S. H., May, '97 Work.
258	4	2014	4	2014	Printed...	Report of Operations, S. H. May, '97, Carter.
259	9	4265	4	2016	Printed...	Letter, Paulding Exor. to Cf. Engr. Oct. 2, '96.
260	27	.....	4	2016	Blue Point	Map of Hutchinson I., with report, May 26, '91.
261	9	4270	4	2017	Printed...	Report, Carter on Hutchinson I., May 26, '91.
262	.....	Sent up	4	2043	Original...	Proposal, P. S. Ross, S. H. Dredging, Oct. 15, '90.
263	.....	Sent up	4	2043	Original...	Proposal, Sav'h Dredging Co., Dredging, Oct. 15, '90.
277	9	4281	4	2098	Printed...	Charter, Empire Construction Co.
278	26	13131	4	2105-6	Printed...	Stock Cerf. Book, Construction Co.
279	4	2113	4	2113-19-	Printed...	Letter, Sep. 21, '97, Carter to Board in
	14	6583	and 5	2420		relation to Papers in File Case.
280	.....	Sent up	5	2153-4	Map.....	Sounding site of Tybee Breakwater, A. S. Cooper, Feb. 3, '97.
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282	26	13203	5	2159-61	Printed...	Report of Operations, S. H., Nov. '96, Carter.
283	26	13205	5	2159-61	Printed...	Report of Operations, S. H., Dec. '96, Carter.
284	26	13208	5	2159-61	Printed...	Report of Operations, S. H., Jan. '97, Carter.
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287	26	13215	5	2159-61	Printed...	Report of Operations, S. H., Apr. '97, Carter.
288	26	13217	5	2159-61	Printed...	Report of Operations, S. H., May '97, Carter.
289	26	13220	5	2159-61	Printed...	Report of Operations, S. H., June '97, Carter.
295	9	4286	5	2182	Printed...	Personal Report, Mch. '97, Carter.
296	9	4288	5	2184	Printed...	Personal Report, May '97, Carter.
297	27	.....	5	2186-7	Blue Print.	Comp. Advertisement of Contracts.
298	9	4290	5	2189	Printed...	Vou. 8, Mch. '93, S. H.
299	.....	Sent up	5	2191	Original...	Computation, S. H., Feb. '95, Memo.
300	27	.....	5	2191	Blue Print.	Geisler's estimate, S. H., Feb. '95.
301	9	4292	5	2191	Printed...	Vou. 10, Mch. 1895, S. H.
302	9	4294	5	2191-2	Printed...	Report of Operations, S. H., Feb. '95, Carter.

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308	24	11350	5	2197-8	Printed...	
309	24	11355	5	2197-8	Printed...	Assent of Sureties to Sup. Contr., Mch.
310	24	11355	5	2197-8	Printed...	17, '97, Original sent up.
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315	9	4304	5	2316	Printed...	Vou. 9, C. S. Work, Feb. '95.
316	9	4306	5	2316	Printed...	Vou. 29, C. S. Work, Mch. '95.
317	9	4307	5	2316	Printed...	Vou. 23, C. S. Work, Apr. '95.
318	9	4309	5	2316	Printed...	Vou. 17, C. S. Work, May, '95.
319	9	4310	5	2316	Printed...	Vou. 13, C. S. Work, Nov. '94.
361	9	4311	5	2392	Printed...	Vou. 66, C. S. Work, June, '95.
320	21	9860	5	2316	Printed...	Bond to Contr. 6517.
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358	9	4313	5	2361	Printed...	Form of Power of Atty. used by Treasury.
359	9	4315	5	2361	Printed...	Circular U. S. Treasurer as to Drafts.
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361	9	4311	5	2392	Printed...	Vou. 66, C. S. Work, June, '95.
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412	.....	Sent up	5	2492-4	Photos....	Of Brush Hilton Head.
413	.....	Sent up	5	2492-4	Photos....	Of Brush Hilton Head.
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461	27	.....	8	4193-97	Blue Print.	Cooper's Tables, Spec. Gravity of rock used.
462	.....	Sent up	8	4196-9	Chart.....	Sounding Tybee Breakwater.
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9	9	4325	5	2453	Printed...	Annual Rep. Empire C. Co.
10	9	4328	5	2453	Printed...	Annual Rep. Empire C. Co.
11	9	4330	5	2473	Printed...	Baggage Decla. B. D. Greene.
12	9	4331	5	2474	Printed...	Baggage Decla. B. D. Greene.
13	27	.....	5	2521	Blue Print.	Computation by S. M. Hale.
14	.....	Sent up	5	2639-51	Profile....	By Wisner & Ripley, D—extension of Oyster Bed T. Wall, Jan. 6, '98.
14-A	.....	Sent up	19	4225	Profile....	By Wisner & Ripley, Tybee Breakwater, Longitudinal, '98.
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24	26	13225	6	3010-48-49	Printed...	Compilation from Annual Reports, Chief Engs.
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27	27	.....	....	4465	Blue Print.	Abstract of Proposals opened Dec. 22, 1902, for Sav. River, bids rejected by Gillette.
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....	10	4621	10	4618	Printed...	Letter, Nov. 2, 1900, Blair to Baskerville as to making Ck. to Capt. Carter's order.
....	10	4622	10	4618	Printed...	Letter, Nov. 5, 1900, Blair to Bowers & Sands as to endorsement of Ck. by I. S. Carter, Atty. in fact for O. M. Carter.
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....	10	4624	10	4618	Printed...	Letter, Nov. 14, 1900, O. M. Carter to Amer. M. Co.
....	10	4624	10	4618	Printed...	Check, June 20, 1901, $100, Bowers & Sands to O. M. Carter, with endorsements.
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.....	10	4678	10	4678	Printed...	Stipulation as to certain original Exhibits to be held in custody of Edward I. Johnson.
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272	24	11275 Sent up	10	4654	Printed... Original...	Receipt dated Oct. 29, 1897, of O. M. Carter to R. F. Westcott, for Securities and Documents.
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283	24	11289 Sent up	10	4654	Printed... Original...	Settlement Agreement, Oct. 29, 1897, R. F. Westcott and O. M. Carter, concerning property in Orange, N. J.

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413	28	.....	10	4647	Blue Print.	Statement from books of Union Trust Co., N. Y., in relation to deposit of check of $21,000 Aug. 10, 1897, by R. F. Westcott.

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414	28	.....	10	4647	Blue Print.	Statement from books of Nat. Bank of Commerce, N. Y., in relation to check of $21,000, received from the Union Trust Co., N. Y., Aug. 10, 1897, and sent to Bk. of Manhattan Co., on Aug. 11, 1897.
415	28	.....	10	4648	Blue Print.	Statement from books of Bank of Manhattan Co., N. Y., in relation to check for $21,000 received from Nat. Bk. of Commerce, N. Y., and charged by it to acct. of Knickerbocker Trust Co., N. Y., Aug. 11, 1897.
416	28	.....	10	4648	Blue Print.	Statement from books of Knickerbocker Trust Co., N. Y., showing payment by it to Bk. of Manhattan Co., N. Y., its clearing house agent of $21,000 for a check of B. D. Greene drawn on Knickerbocker Trust Co., N. Y., and charge of said check to acct. of B. D. Greene, on Aug. 11, 1897.
417	28	.....	10	4649	Blue Print.	Extracts from books of A. W. Kilborne & Co., Brokers, N. Y., showing sales of certain securities for acct. of L. L. Kellogg.
417	28	.....	10	4649	Blue Print.	Ck., Oct. 12, 1897, A. W. Kilborne & Co., to L. L. Kellogg, $14,990.62.
417	28	.....	10	4649	Blue Print.	Ck., Apr. 27, 1898, A. W. Kilborne & Co., to L. L. Kellogg, $9,943.33.
418	28	.....	10	4649	Blue Print.	Extracts from books of Milwaukee & St. Paul R. R. Co., showing redemption Mar. 12, 1898, for L. L. Kellogg of 10M Milwaukee&St.P., 1st mtge. bonds, due Feb. 1, 1898.
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419	28	.....	10	4650	Blue Print.	Statement from books of Nat. Bk. of Savannah, Ga., as to payment Jan. 27, 1899, to O. M. Carter, of $4,500 for 50 shares of Brush Electric & Power Co. stock.
420	28	.....	10	4650	Blue Print.	Extracts from books of James F. Bragg, Real Estate Agt., N. Y., showing payments of rents on Pty. 286 8th Ave. N. Y., Dec. 10, 1894, to Aug. 9, 1897.
421	28	Sent up	10	4651	Checks.... Blue Print.	Extracts from books of James F Bragg, Real Estate Agt., N. Y., showing sale of property No. 286 8th Ave., N. Y., on Oct. 1, 1894, to Robert F. Westcott, for $39,500.

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427	10	4658	10	4652	Printed...	Deed, Jan. 25, 1897, R. F. Westcott and wife to O. M. Carter, to undivided ½ interest in Orange, N. J., property.
428	10	4662	10	4652	Printed...	Deed, June 9, 1899, O. M. Carter to R. F. Westcott, to certain portion of Orange, N. J. property on partition.
429	10	4665	10	4652	Printed...	Deed, Oct. 23, 1900, O. M. Carter by I. S. Carter, Atty in fact to Frank P. Blair, to Orange, N. J. pty.
430	10	4669	10	4653	Printed....	Deed, Jan. 25, 1901, O. M. Carter by I. S. Carter, Atty. in fact to L. D. Carter, of Orange, N. J., pty.
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434	28	.....	10	4655	Blue Print.	Account of B. D. Greene with American Exchange Nat. Bk., N. Y., for Sept. 1891, April, 1894 and Dec., 1894.
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436	28	.....	10	4656	Blue Print.	Extracts from the books of C. H. Van Deventer, broker, N. Y., showing certain credits in acct. of R. F. Westcott.
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438	28	.....	10	4656	Blue Print.	Extracts from acct. books of Reed & Flagg, brokers, N. Y., showing entries of all transactions in the name of R. F. Westcott, exclusive of those appearing in Exhibit 239 (Shields.)
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442	28	.....	10	4657	Blue Print.	Account kept in name of Robert F. Westcott with Union Trust Co., N. Y., Feb. 4, 1895, to May 11, 1896, and checks drawn by R. F. Westcott, O. M. Carter, Atty.
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.....	10	4678	10	4678	Printed...	Stipulation as to certain origina exhibits to be held by Ed. J Johnson.

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2	10	4690	10	4688	Printed...	Affidavit of H. R. Duval with letters attached.
3	10	4692	10	4689	Printed...	Affidavit of A. J. Rose, relative to certain drafts of letters prepared for signature of R. F. Westcott, for use before Board of Officers, etc.
....	10	4680	10	4680	Printed...	Memo. of purchase of Stable, 155 W. 58-st., N. Y., signed by Westcott, May 2, 1893.

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3	10	4901–3	10	4716	Printed...	Receipt, May 23, 1900, of D. Carter and I. S. Carter to J. Paul for securities.
4	10	4903	10	4716	Printed...	Extracts from the books of Jas. Bragg, showing certain payme and corresponding checks evide ing same, for acct. O. M. Cart on property 286-8th ave., N. Y and Orange, N. J., with chec and letters, Sept. 9, 1897, to Ju 25, 1901.
.....	10	4905–14	10	4716	Printed...	Corresponding checks copied bea ing indorsements of I. S. Cart and L. D. Carter.
.....	10	4914	10	4716	Printed...	Letter, L. D. Carter to J. F. Brag June 6, 1901.
.....	10	4915	10	4716	Printed...	Letter, L. D. Carter to J. F. Brag June 14, 1901.
.....	10	4915	10	4716	Printed...	Letter, L. D. Carter to J. F. Brag July 1, 1901.
5	10	4915–6	10	4716–7	Printed...	Affidavit of J. F. Bragg relative Sale 5000, New Jersey Junctio Bonds with Exhibit attached account Zimmerman and Fo shay, Brokers.
6	10	4917	10	4717	Printed...	Affidavit, T. H. Baskerville, relati to Mtge. Loan of $23,000, mad by Am. Mtge. Co., N. Y., on 8 ave property. With following documents a tached—
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.....	10	4921	10	4717	Printed...	Check, June 20, 1901, Am. Mtg Co. to O. M. Carter $100.
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..	10	4923	10	4717	Printed...	Check, Sept. 24, 1900, A. O. Slaughter & Co. to F. P. Blair, $20,362.50
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.....	10	4942	10	4718–9	Printed...	Affidavit showing receipt of by National Park, N. Y.
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.....	10	4954	10	4719	Printed...	Ck., Jan. 16, 1901, J. P. Morgan Co. to J. H. Paul, $200.
.....	10	4954	10	4719	Printed...	Ck., July 20, 1901, J. P. Morgan Co. to J. H. Paul, $200.
17	10	4955	10	4719–20	Printed...	Affidavit of D. P. Carter as to sec ities received by him.
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19	10	4959–60	10	4720	Printed...	Statement in relation to depo May 15, 1901, by L. D. Carter Nat. Live Stock Bk., Chica $5,000.
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21	10	4963	10	4866	Printed...	Statement of dates when I. S. Carter registered at Hoffman House, N. Y., and amount of hotel bills, Oct. 1, 1899, to Dec. 1, 1901.
22	10	4963	10	4866	Printed...	Statement of date when I. S. Carter Carter registered at Raleigh Hotel Washington, and amount of hotel bill, Oct. 1, 1899, to Dec. 1, 1901.
23	10	4964–5	10	4806	Printed...	Affidavit of Keeper, Ft. Leavenworth Penitentiary, as to monies deposited to Carter's credit, dates of visits, etc.
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25	10	4968	10	4866–7	Printed...	Letter Statement, Ebbett House, Washington, showing L. D. Carter did not register there from May 1, 1901, to Dec. 1, 1901.
26	10	4969	10	4867	Printed...	Letter Correspondence to show L D. Carter did not register at Rigg's House, Washington, from May 1, 1901, to Dec. 1, 1901.
27	10	4969–72	10	4867	Printed...	Affidavit of A. J. Rose, relative to certain assets received by Kellogg and Rose and payments made.
28	10	4973	10	4867	Printed...	Extract from the books of the Riggs Nat. Bk., Washington, D. C., showing certain transactions acct. of Jere M. Wilson and deposit tickets.
29	10	4974	10	4867	Printed...	Agreement as to certain collections made by Mackall & Anderson of Cunningham notes.
30	10	4975	10	4867–8	Printed...	Statement of G. F. Sharritt, clerk, Cir. Ct. U. S. Dist., Kas., of all payments mde by Carter in suit—O. M. Carter vs. R. W. McClaughey.
31	10	4976	10	4868	Printed...	Statement of all money or its equivalent received by F. P. Blair between Oct. 1, 1899, and May 23, 1900, from all sources on account of I. S. Carter, L. D. Carter and O. M. Carter.

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33	28	.....	10	4874	Blue Print.	Estimate of expenses of L. ... Carter on trips.
34	10	4977	10	4892	Printed...	Statement of certain transaction... L. D. Carter and L. D. Carter a... Son with the Oakland (Ill.) N... Bank.
35	10	4978	10	4892	Printed...	Correspondence to show L. D. C... ter did not stop at Shorel... Hotel, Washington, D. C., fr... June, 1900, to Jan. 1, 1901.
36	10	4978	10	4892	Printed...	Correspondence to show L. D. C... ter did not stop at Shorel... Hotel, Washington, D. C., fr... June, 1900, to Jan. 1, 1901.
37	10	4979	10	4893	Printed...	Debit Items of account of I. Stan... Carter with Trust Fund, sta... ment prepared by Pff's coun... for Master.
F	28	.....	10 11	4701 4985 4894 5209–11	Blue Print.	Sheets 1 to 7, Exhibit to the Supp... mental bill filed in U. S. Cir. C... So. Dist., N. Y., being a detail... statement of further tracing ... the trust fund made subsequ... to filing of original bill. Amen... ment to bill copied R. Vol. 1... p. 9351–57.
.....	10	5040–72	10	5040	Printed...	Report of Booth Master filed Ap... 15, 1903.

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	Vol.	Page	Vol.	Page		
1	10	4985	10	4721–2	Printed. . .	Salary Contract, May 15, 1900, between L. D. Carter and I. S. Carter, Atty.-in-fact for O. M. Carter.
2	10	4986	10	4727–8	Printed. . .	Statement of account between Atwood & Hooper and O. M. Carter Dec. 27, 1900 to Sept. 24, 1901.
3	10	4988	10	4729	Printed. . .	Letter of J. H. Atwood to L. D. Carter, Jan. 2, 1902.
4	10	4988	10	4730	Printed. . .	Receipt clerk, U. S. Sup. Ct. to J. H. Wilson, March 21, 1901, $1,290.
5	10	4989	10	4734	Printed. . .	Statement of Receipts and Disbursements of L. D. Carter on account of O. M. Carter from April, 1900 to present time (Dec. 12, 1901).
6	10	4990	10	4756	Printed. . .	Letter of H. G. Stone to E. I. Johnson, Dec. 23, 1901.
7	10	4992	10	4792	Printed. . .	Letter of Western Passenger Assn., to I. S. Carter, May 9, 1901.
8	10	4993	10	4792	Printed. . .	Letter of Western Passenger Assn. to I. S. Carter, Sep. 26, 1901.
9	10	4994	10	4801	Printed. . .	Insurance Premium Receipt of Equitable Life Ass. Society on O. M. Carter Policy, June 7, 1902, $453.
10	10	4994	10	4801	Printed. . .	Insurance Premium Receipt of Equitable Life Ass. Society on O. M. Carter Policy, June 7, 1901, $453.
11	10	4994	10	4801–2	Printed. . .	Insurance Premium Receipt of Equitable Life Ass. Society on O. M. Carter Policy, June 7, 1900, $453.
12	10	4852	10	4809	Printed. . .	Ck., Mch. 20, 1901, L. D. Carter and Son to J. M. Wilson, $700.
13	10	4853	10	4809	Printed. . .	Exchange, May 14, 1901, Oakland (Ill.) Nat. Bk. to L. D. Carter, indorsed Frank P. Blair, $6,000.
14	10	4854	10	4809–10	Printed. . .	Exchange, Jan. 15, 1901, Oakland (Ill.) Nat. Bk. to L. D. Carter, indorsed for deposit, J. M. Wilson $500.
15	10	4855	10	4810	Printed. . .	Exchange, Jan. 15, 1901, Oakland (Ill.) Nat. Bk. to L. D. Carter, indorsed for deposit, J. M. Wilson, $500.
16	10	4856	10	4810	Printed. . .	Exchange, April 9, 1901, Oakland (Ill.) Nat. Bk. to L. D. Carter, indorsed for deposit, J. M. Wilson, $1,000.
17	10	4857	10	4810–12	Printed. . .	Exchange, July 24, 1901, Oakland (Ill.) Nat. Bk. to L. D. Carter, $2,000.

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18	10	4858	10	4810–12	Printed...	Exchange, July 24, 1901, Oak (Ill.) Nat. Bk. to L. D. Car $2,000.
19	10	4859	10	4812	Printed...	Exchange, Aug. 3, 1901, Oak (Ill.) Nat. Bk. to L. D. Carter, $
20	10	4860	10	4812–3	Printed...	Exchange, Aug. 24, 1901, Oak (Ill.) Nat. Bk. to L. D. Car indorsed S. P. Curtis, $100.
21	10	4861	10	4813	Printed...	Ck., L. D. Carter, Feb. 14, 190 H. G. Stone, $750.
22	10	4861	10	4813	Printed...	L. D. Carter & Son draft, Dec. 1900, to Leavenworth Nat. $500.
23	10	4862	10	4814	Printed...	Ck., L. D. Carter & Son, Dec. 1900, to L. D. Carter, $100.
24	10	4862	10	4815–16	Printed...	Exchange, Feb. 16, 1901, Citi Bk., Oakland, Ill., to L. D. C ter, indorsed for deposit, J. Wilson, $1,000.
25	10	4863	10	4816	Printed...	L. D. Carter draft Aug. 28, 1901 Kellogg & Rose, $1,000.
26	10	4864	10	4816	Printed...	Ck., L. D. Carter & Son, Sept 1901, to Horace G. Stone, $
27	10	4864	10	4816	Printed...	Ck., L. D. Carter & Son, Jan. 1901, to J. H. Winkler, $50.
28	10	4995	10	4816–8	Printed...	Receipt, Sept. 1, 1901, J. H. Wi ler to L. D. Carter, $1,000.
29	10	4995	10	4816–8	Printed...	Receipt, Sept. 1, 1901, J. H. Wi ler to L. D. Carter, $200.
30	10	4865	10	4818–9	Printed...	Receipt, Feb. 1, 1901, I. S. Car to L. D. Carter, $6,000.
31	10	4865	10	4828–9	Printed...	Ck., July 7, 1902, L. D. Carter Son to Atwood & Hooper, $25.
32	10	4995	10	4839	Printed...	Ck., Aug. 7, 1900, I. S. Carter D. P. Carter, $54.
33	10	4996	10	4839	Printed...	Ck., Aug. 2, 1900, I. S. Carter L. D. Carter, $500.
34	10	4996	10	4839	Printed...	Ck., Aug. 8, 1900, I. S. Carter L. D. Carter, $500.
35	10	4996	10	4839–40	Printed...	Ck., Oct. 23, 1900, I. S. Carter F. P. Blair, $26.50.
36	10	4997	10	4840	Printed...	Ck., Sept. 21, 1900, I. S. Carter D. P. Carter, $300.
37	10	4997	10	4840	Printed...	Ck., Dec. 3, 1900, I. S. Carter Union Tr. Co., Chicago, $60
38	10	4997	10	4840–1	Printed...	Ck., Dec. 18, 1890, I. S. Carter Self, $2,150.
39	10	4997	10	4841–2	Printed...	Ck., Feb. 20, 1901, I. S. Carter Union Tr. Co., Chicago, $484.
40	10	4998	10	4841–2	Printed...	Ck., June 1, 1901, I. S. Carter Union Tr. Co., Chicago, $453.
41	10	4998–5005	10	4842–3	Printed...	Stub, Check Book of I. S. Carter Union Trust Co., of Chicago, Ju 12, 1900, to June 13, 1901.

fts. xh. o.	Where Copied		Where Identified and offered		How Appearing	Nature of Document
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42	10	5006–7	10	4842–3	Printed...	Stub, Check Book of I. S. Carter on N. W. Harris & Co., Chicago, June 20, 1901, to Aug. 22, 1901.
43	10	5007–9	10	4844	Printed...	I. S. Carter's Bank Pass Book with Union Trust Co., Chicago, June 6, 1900 to June 15, 1901.
44	10	5010	10	4874	Printed...	Power of Atty., Oct. 2, 1899, O. M. Carter to I. S. Carter.
45	10	5011	10	4874–5	Printed...	Letter, A. J. Rose to I. S. Carter, March 20, 1900.
46	10	5012	10	4875	Printed...	Tax Receipt, Dec. 5, 1900, on Orange, N. J., Pty., $182.98.
47	10	5012	10	4875	Printed...	Tax Receipt, Dec. 5, 1900, on Orange, N. J., Pty., $140.76.
48	10	5013	10	4875	Printed...	Tax Receipt, Dec. 5, 1900, on Orange, N. J., Pty., $140.76.
49	10	5014	10	4875	Printed...	Tax Receipt, Dec. 5, 1900, on Orange, N. J., Pty., $140.76.
50	10	5014	10	4875	Printed...	Receipt, Sept. 18, 1900, of F. P. Blair to I. S. Carter for documents and securities.
51	10	5015	10	4875–6	Printed...	Bill, Oct. 30, 1902, H. J. Hamlin to L. D. Carter, $1250–
52	10	5015	10	4876	Printed...	International Money Order Receipt, Dec. 5, 1901, $100.
53	10	5016	10	4876	Printed...	Receipt, Sept. 24, 1900, Frank P. Blair to I. S. Carter, $5,000.
54	15	5016	10	4876	Printed...	Letter, J. H. Paul to I. S. Carter, July 13, 1900.
55	10	5016	10	4876	Printed...	Affidavit of J. H. Atwood.
56	10	5017	10	4876–7	Printed...	Letter, J. H. Paul to I. S. Carter, March 1, 1901.
57	10	5017	10	4877	Printed...	Demand Note, June 1, 1895, of O. M. Carter to Lucinda M. Carter, $2,000.
....	10	5017	10	4877	Printed...	Receipt, April 25, 1901, L. M. Carter to I. S. Carter, Atty., $2,581.72.
58	10	5018	10	4894	Printed...	Agreement relative to letters of Olive Lewis.
59	10	5019–32	10	4894	Printed...	The Olive Lewis Correspondence.
60	10	5033	10	4894	Printed...	Agreement relative to certain items in acct. of J. H. Paul, in King's Co. Bank, Brooklyn, and certain payments to Olive Lewis.
61	10	5034	10	4894–5	Printed...	Affidavit of O. M. Carter relative to his employment of I. S. Carter.
.....	10	5035–8	10	5035–8	Printed...	Statement made by Dft's. counsel of receipts and disbursements of L. D. & I. S. Carter with Trust Fund for use of Master, Feb. 18, 1893.
.....	10	5039	10	5039	Printed...	Receipt of Whitney Recr., March 13, 1903, for 10 Kentucky C. bonds.

INDEX TO WYMAN'S EXHIBITS.

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251¼	....	Sent up	11	5127-8	Original...	Deposit Ticket O. M. Carter with T. Co., June 8, 1892, $2,500.
256¾ to 256¼	....	Sent up	11	5127-8	Original...	Deposit Tickets R. F. Westcott with U. T. Co., previously offered and described Pff. Ex. 441, Parsons.
256½	....	Sent up	11	5127-8	Original...	Deposit Ticket R. F. Westcott with U. T. Co., Previously offered as described Pff. Ex. 441, Parsons.
256¾	....	Sent up	11	5127-8	Original...	Letter Aug. 9, 1897, Westcott to T. Co., enclosing checks, $183.19. Previously offered as described in Pff. Ex. 441, Parsons.
269½	11	5288	11	5115-6	Printed...	Power of Att'y, Westcott to Carter Oct. 21, 1891.
270	11	5290	11	5117	Printed...	Power of Att'y, Westcott to Carter Jan. 7, 1895.
271	11	5292	11	5120-2	Printed...	Power of Att'y, Westcott to Carter Jan. 17, 1895.
273	11	5294	11	5120-2	Printed...	Bill Title Guar. & Tr. Co., Nov. 1894.
274	....	Sent up	11	5127-9	Original...	Check Nov. 26, 1894, Westcott Title Guar. & Tr. Co., $250. Previously offered and described in Pff. Ex. 441, Parsons.
275	....	Sent up	11	5127-9	Original...	Check Oct. 24, 1894, Westcott Harnett & Co., $4,004.50. Previously offered and described Pff. Ex. 441, Parsons.
277	11	5123 Sent up	11	5120-22	Original Printed..	Ck. R. F. W., O. M. Carter, Att'y Nov. 8, 1895, favor Wm. Elliott Att'y, $3,780. Previously offered and described in Pff. Ex. 441 Parsons.
278	11	5123 Sent up	11	5120-22	Original Printed..	Ck, R. F. W., O. M. Carter, Att'y Nov. 21, 1895, favor A. Mingo $2,220. Previously offered as described in Pff. Ex. 442, Parsons.
279	11	5124 Sent up	11	5120-22	Original Printed..	Ck. R. F. W., O. M. Carter, Att'y June 29, 1895, favor John Lyon $15,000. Previously offered as described in Pff. Ex. 442, Parsons.
280	11	5124 Sent up	11	5120-22	Original Printed..	Ck. R. F. W., O. M. Carter, Att'y June 29, 1895, favor T. M. Cunningham, $10,000. Previously offered and described in Pff. Ex. 442, Parsons.
281	....	Sent up	11	5127-9	Original...	Ck. Oct. 26, 1896, Westcott to Carter, indorsed Barne Gordon, $10,000. Previously offered and described in Pff. Ex. 441, Parsons.

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282	11	5125 Sent up	11	5120–2	Printed .. Original	Ck. Oct. 22, 1896, Carter to Westcott, $10,000. Previously offered and described in Pff. Ex. 252, Shields.
294	29	.....	11	5144–9	Blue Print.	Personal Expenditures of O. M. Carter.
295	11	5150	11	5149–50	Printed...	Recapitulation Personal Expenditures of O. M. Carter.
296	11	5295	11	5120–2	Printed...	Bill Gorham Mnfg. Co., N. Y.
297	11	5295	11	5120–2	Printed...	Ck. June 9, 1893, O. M. Carter favor himself, $500.
298	11	5296	11	5120–2	Printed...	Bill Stern Bros., July 11, 1893, $171.
299	11	5298	11	5120–2	Printed...	Ck. July 11, 1893, O. M. Carter to Stern Bros., $171.
300	11	5298	11	5120–2	Printed...	Bill Union Club, Aug. 7, 1893.
301	11	5298	11	5120–2	Printed...	Ck. Aug. 7, 1893, O. M. Carter favor self, $100.
302	11	5299	11	5120–2	Printed...	Bill Best & Co., Purchases Sept. 6-8, 1893.
303	11	5300	11	5120–2	Printed...	Bill St. James Hotel, N. Y.
304	11	5300	11	5120–2	Printed...	Ck. Oct. 10, 1893, O. M. Carter to University Club, $27.81.
305	11	5301	11	5120–2	Printed...	Receipt University Club, Oct. 10, 1893.
306	11	5240	11	5110–1	Printed...	Letter of Carter to Chief of Engineers, Dec. 3, 1893, reporting departure on 3 days leave of absence.
307	11	5301	11	5120–2	Printed...	Bill Tiffany & Co., N. Y
308	11	5302	11	5120–2	Printed...	Receipt University Club, Jan. 8, 1894.
309	11	5302	11	5120–2	Printed...	Ck. Jan. 9, 1894, O. M. Carter favor self, $500.
310	11	5242	11	5110–1	Printed...	Letter of Carter to University Club Sept. 7, 1894, instructing them to hold mail until his arrival.
311	11	5303–4	11	5120–2	Printed...	Receipted Bill Tiffany & Co., paid Sept. 10, 1894.
312	11	5243	11	5110–1	Printed...	Letter of Carter to University Club Oct. 1, 1894, asking reservation of room for Oct. 4.
313	11	5304–5	11	5120–2	Printed...	Bill Tiffany & Co., $500, paid Oct. 5, 1894.
314	11	5305	11	5140–2	Printed...	Bill Bastable & Hannigan.
315	11	5306	11	5120–2	Printed...	Bill Stern Bros., N. Y.
316	11	5306	11	5120–2	Printed...	Ck. Dec. 10, 1894, O. M. Carter, favor self, $100.
317	11	5307	11	5120–2	Printed...	Bill Brentano's, N. Y.
318	11	5243	11	5110–1	Printed...	Letter of Carter to Reed & Flagg May 29, 1895, ordering purchase and sale of bonds and stating he will be in N. Y. June 6.

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319	30	.....	11	5159–82	Blue Print.	Table of Divisions compiled by Edward I. Johnson, accountant.
320	29	.....	11	5192–6	Blue Print.	Statement of collections of all coupons, dividends and interest notes on all securities purchased in New York and notes on southern loans claimed by the United States to have been investments for account of Oberlin M. Carter, of Diverted Funds, as per Exhibit No. 319, from date of purchase to Sept. 1897.
321	29	.....	11	5197	Blue Print.	Statement of other known income of O. M. Carter from stocks when held being the stocks acquired in Savannah.
322	11	5281	11	5112–15	Printed...	Letter of A. Minis to Carter Dec. 7, 1896, enclosing check $424.05.
323	29	.....	11	5197–8	Blue Print.	Comparative statement of O. M. Carter's personal expenditures with the aggregate of income from his salary and commutation and from interest and dividends on investments.
326	11	5142 Sent up	11	5130–4	Printed...	Coupon bag of Mercantile Safe Deposit Co. (Original sent up.)
329	11	5319	11	5157–8	Printed...	List of all disbursing checks issued on Jetty contracts by O. M. Carter from 1892 to 1897, inclusive, on which the first bank indorsement is a bank outside of Brunswick, Ga., Savannah, Ga., or Fernandina, Fla., and which checks are not included in checks specified as used in the Divisions Exhibit 319.
330 330A to 330Z 330AA to 330ZZ 330AAA to 330NNN	29	.....	11	5150–4	Blue Print.	Statements of the bank account of B. D. Greene with the American Exchange Nat. Bk., N. Y., from Jan. 1, 1891, to May 31, 1897, with exception of Sept. 1891 and April and Dec., 1894 (for account for the months so excepted see Exh. 434, Parsons)
330000	29	.....	11	5150–4	Blue Print.	Statement of the bank account of B. D. Greene with the Knickerbocker Trust Co., N. Y., from Sept. 20, 1895, to Jan. 3, 1898.

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355	11	5320	11	5199	Printed...	Aggregate at cost prices taken from Exh. 319 of certain securities, in relation to transactions of Kellogg & Rose.
368	11	5321	11	5151–2	Printed...	Table of Dimensions of Mats put in Jetties Contract 6515 S. H. 1896.
.....	31	.....	24	12087	Blue Print.	
369	11	5326	11	5152	Printed...	Table of Dimensions of Mats put in Jetties Contract 6517, C. S. 1896.
.....	31	.....	24	12087	Blue Print.	
370	31	.....	11	5152–3	Blue Print.	Table of Dimensions of Mats put in Jetties Contract 4960, S. H., 1892. Same as Deft's. U.5 to I-7 (Shields) and embraced in Dft. Exh. 150 (Wyman).
445	29	.....	11	5097	Blue Print.	Extract from acct. books of C. H. Van Deventer, broker, showing entries of all transactions in the name of R. F. Westcott, Jan. 1, 1890 to Jan. 1, 1892.
446	29	.....	11	5098	Blue Print.	Account of R. F. Westcott with the Union Trust Co., N. Y., Dec. 31, 1889 to July 31, 1891.
447	29	.....	11	5098	Blue Print.	Account of O. M. Carter with the So. Bk., State of Ga., checks drawn by O. M. Carter, J. W. O. Sterly, Atty.
448	29	.....	11	5098–9	Blue Print.	List of Dividends paid O. M. Carter by Savannah Lighterage and Transfer Co. on Stock in name of O. M. Carter.
449	29	.....	11	5099	Blue Print.	List of Stock Certificates of Propellor Tow Boat Co. of Savannah, standing in name of O. M. Carter and dividends paid.
450	29	.....	11	5099	Blue Print.	Extracts from books of Kanawha Valley Bk., Charleston, W. Va., showing sale of certain securities for account of Rufus Switzer, of Huntington, West Va.
451	11	5101 Sent up	11	5099–100	Printed...	Principal Note, John Lyons, $15,000 (original sent up).
452	11	5101 Sent up	11	5099–100	Printed...	Interest Note, John Lyons, $450 (original sent up).
453	11	5102 Sent up	11	5099–100	Printed...	Interest Note, John Lyons, $450 (original sent up).
454	11	5102 Sent up	11	5099–100	Printed...	Interest Note, John Lyons, $450 (original sent up).
455	11	5103 Sent up	11	5099–100	Printed...	Interest Note, John Lyons, $450 (original sent up).
456	11	5104 Sent up	11	5103	Printed...	Beirne Gordon, Principal, Note, $10,000 (original sent up).
457	11	5104 Sent up	11	5103	Printed...	Beirne Gordon, Interest Note, $300 (original sent up).

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458	11	5105 Sent up	11	5103	Printed...	Bierne Gordon, Interest Note, $300 (original sent up).
459	11	5230	11	5110-1	Printed...	Letter of Carter to W. H. Bixby, July 30, 1889.
460	11	5231	11	5110-1	Printed...	Telegram of Carter to W. H. Bixby, July 31, 1889.
461	11	5231	11	5110-1	Printed...	Letter of Carter to Union Tr. Co. Nov. 7, 1891.
462	11	5232	11	5110-1	Printed...	Letter of Carter to Mr. Rossiter, Feb. 8, 1892.
463	11	5232	11	5110-1	Printed...	Letter of Carter to Westcott, May 5, 1892.
464	11	5234	11	5110-1	Printed...	Letter of Carter to Watson & Gibson, Aug. 1, 1892.
465	11	5235	11	5110-1	Printed...	Letter of Carter to C. H. Van Deventer, Feb. 16, 1893.
466	11	5236	11	5110-1	Printed...	Letter of Carter to C. H. Van Deventer, April 8, 1893.
467	11	5236	11	5110-1	Printed...	Letter of Carter to C. H. Van Deventer, April 11, 1893.
468	11	5237	11	5110-1	Printed...	Letter of Carter to F. O'Neil, May 5, 1893.
469	11	5238	11	5110-1	Printed...	Letter of Carter to L. M. Fleming, May 13, 1893.
470	11	5239	11	5110-1	Printed...	Letter of Carter to A. J. Twigg, Oct. 30, 1893.
471	11	5240	11	5110-1	Printed...	Letter of Carter to Maj. Turtle, Feb 8, 1894.
472	11	5241	11	5110-1	Printed...	Letter of Carter to Chief of Engineers, Feb. 8, 1894.
473	11	5244	11	5110-1	Printed...	Letter of Carter to J. K. Garnett, June 12, 1895.
474	11	5244	11	5110-1	Printed...	Letter of Carter to So. Bk., State of Ga., July 1, 1895.
475	11	5245	11	5110-1	Printed...	Letter of Carter to Mr. Solley, Nov. 29, 1895.
476	11	5245	11	5110-1	Printed...	Letter of Carter to Gen. Craighill, Chief of Engrs., Dec. 21, 1895.
477	11	5246	11	5110-1	Printed...	Letter of Carter to Union Trust Co., Dec. 28, 1895.
478	11	5247	11	5110-1	Printed...	Letter of Carter to Union Trust Co., Jan. 2, 1896.
479	11	5247	11	5110-1	Printed...	Letter of Carter to F. H. Gibbens, Treas., April 22, 1896.
480	11	5248	11	5110-1	Printed...	Letter of Carter, atty., to Mrs. Sadie Grant, July 31, 1896.
481	11	5248	11	5110-1	Printed...	Letter of Carter, atty., to W. B. Adams, July 31, 1896.
482	11	5249	11	5110-1	Printed...	Letter of Carter, atty., to Mrs. Julia Zippel, July 31, 1896.
483	11	5250	11	5110-1	Printed...	Letter of Carter to H. R. Duval, Nov. 29, 1896.

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484	11	5251	11	5110-1	Printed...	Letter of Carter to Westcott, Jan. 25, 1897.
485	11	5251	11	5110-1	Printed...	Letter of Carter to Westcott, Jan. 27, 1897.
486	11	5252	11	5112-5	Printed...	Letter of W. M. Black to Carter, Nov. 1, 1886.
487	11	5253	11	5112-5	Printed...	Letter of W. H. Bixby to Carter, Aug. 3, 1889.
448	11	5254	11	5112-5	Printed...	Letter of C. P. Bassett to Carter, April 2, 1891.
489	11	5254	11	5112-5	Printed...	Letter of Watson & Gibson to Carter, Aug. 3, 1892.
490	11	5255	11	5112-5	Printed...	Letter of T. H. Rees to Carter, April 6, 1893.
491	11	5256	11	5112-5	Printed...	Letter of T. H. Rees to Carter, May 2, 1893.
492	11	5257	11	5112-5	Printed...	Letter of A. J. Twiggs to Carter, Oct. 3, 1893.
493	11	5258	11	5112-5	Printed...	Letter of A. J. Twiggs to Carter, Nov. 1, 1893.
494	11	5259	11	5112-5	Printed...	Letter of A. J. Twiggs to Carter, Nov. 20, 1893.
495	11	5260	11	5112-5	Printed...	Letter, Union Trust Co. to Carter, May 6, 1895.
496	11	5261	11	5112-5	Printed...	Letter, Union Trust Co. to Carter, Nov. 13, 1895.
497	11	5262	11	5112-5	Printed...	Letter, Goethals to Carter, Jan. 27, 1896.
498	11	5263	11	5112-5	Printed...	Letter, Treas. Del. Lack. & W.R.R. Co., to Carter, April 24, 1896.
499	11	5264	11	5112-5	Printed...	Letter, Union Trust Co. to Carter, May 11, 1896.
500	11	5265	11	5112-5	Printed...	Letter, Union Trust Co. to Carter, May 13, 1896.
501	11	5266	11	5112-5	Printed...	Letter, Union Trust Co. to Carter, June 15, 1896.
502	11	5267	11	5112-5	Printed...	Letter, Union Trust Co. to Carter, July 20, 1896.
503	11	5268	11	5112-5	Printed...	Letter, Union Trust Co. to Carter, July 20, 1896.
504	11	5269	11	5112-5	Printed...	Letter, Union Trust Co. to Carter, Aug. 17, 1896.
505	11	5270	11	5112-5	Printed...	Letter, Union Trust Co. to Carter, Aug. 20, 1896.
506	11	5271	11	5112-5	Printed...	Letter, Union Trust Co. to Carter, Sept. 15, 1896.
507	11	5272	11	5112-5	Printed...	Letter, Union Trust Co. to Carter, Oct. 8, 1896.
508	11	5273	11	5112-5	Printed...	Letter, Union Trust Co. to Carter, Oct. 12, 1896.
509	11	5274	11	5112-5	Printed...	Letter, Union Trust Co. to Carter, Oct. 21, 1896.
510	11	5275	11	5112-5	Printed...	Letter, Union Trust Co. to Carter, Nov. 2, 1896.

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511	11	5276	11	5112–5	Printed...	Letter, Union Trust Co. to Carter, Nov. 21, 1896.
512	11	5277	11	5112–5	Printed...	Letter, Union Trust Co. to Carter, Dec. 15, 1896.
513	11	5278	11	5112–5	Printed...	Letter, Union Trust Co. to Carter, Dec. 22, 1896.
514	11	5279	11	5112–5	Printed...	Letter, Union Trust Co. to Carter, Dec. 23, 1896.
515	11	5280	11	5112–5	Printed...	Letter, Union Trust Co. to Carter, Dec. 23, 1896.
516	11	5282	11	5112–5	Printed...	Letter, Union Trust Co. to Carter, Dec. 28, 1896.
517	11	5283	11	5112–5	Printed...	Letter, Union Trust Co. to Carter, Dec. 30, 1896.
518	11	5284	11	5112–5	Printed...	Letter, Union Trust Co. to Carter, Dec. 31, 1896.
519	11	5285	11	5112–5	Printed...	Letter, Union Trust Co. to Carter, Jan. 13, 1897.
520	11	5286	11	5112–5	Printed...	Letter, F. H. Gibbens, Treas., to Union Tr. Co., Jan. 20, 1897.
521	11	5286	11	5112–5	Printed...	Letter, Westcott to Carter, Jan. 23, 1897.
522	11	5287	11	5112–5	Printed...	Letter, H. R. Duval to Carter, June 2, 1897.
523 to 531	29	.....	11	5115–6	Blue Print.	Statements of Jas. F. Bragg of collections of Rents from property 286-8th ave, N. Y., and disbursements from Dec. 10, 1896 to May 20, 1897, with Receipts attached.
532	29	.....	11	.....	Blue Print.	Receipt for 1896 Taxes on property 286-8th ave, N. Y.
533 to 537	29	.....	11	5115–6	Blue Print.	Receipts of W. W. Mackall, Treas., to O. M. Carter for Payments on assessments for subscriptions for Hunting Island Investment.
538	11	5118	11	5117–8	Printed...	List of certain checks drawn by O. M. Carter and paid by Union Tr. Co., N. Y.
539	11	5119	11	5118–20	Printed...	List of certain checks drawn by O. M. Carter, and paid by Merchants Nat. Bk., Savannah, Ga.
540	11	5308	11	5125–7	Printed...	Letter, Carter to J. F. Gaynor, April 23, 1885.
541	11	5308	11	5125–7	Printed...	Letter, Carter to J. F. Gaynor, May 5, 1891.
542	11	5309	11	5125–7	Printed...	Letter, Carter to G. Bigalsky, Sept. 16, 1892.
543	11	5310	11	5125–7	Printed...	Telegram, Carter to E. R. Conant, Inspector, May 30, 1893.
544	11	5310	11	5125–7	Printed...	Letter, Carter to E. R. Conant, Inspector, May 30, 1893.

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545	11	5311	11	5125–7	Printed...	Letter, Carter to J. M. Hall, Inspector, June 17, 1895.
546	11	5311	11	5125–7	Printed...	Letter, Carter to M. Twigggs, Asst. Engr., Nov. 28, 1896.
547	11	5312	11	5125–7	Printed...	Letter, Carter to Atlantic Contg. Co., Jan. 21, 1897.
548	11	5313	11	5125–7	Printed...	Letter, Carter to Altantic Contg. Co., June 9, 1897.
549	11	5314	11	5125–7	Printed...	Letter, Carter to Atlantic Contg. Co., July 12, 1897.
550 to 564		Sent up		5130–4	Originals..	15 stub check books of R. F. Westcott with Union Trust Co., N. Y.
565 to 573	11	5134–9 Sent up		5130–4 5130–4	Printed...	9 photographs of detached stub leaves from stub check books of R. F. Westcott, with Union Trust Co., N. Y. (Originals sent up.)
574	11	5140	11	5130–34	Printed...	Assignment by Westcotts to Carter of Zipple mortgage and re-assignment.
575	11	5315	11	5130–34	Printed...	Letter, B. D. Greene to Westcott, May 11, 1897.
576	11	5315	11	5130–34	Printed...	Letter, B. D. Greene to Westcott, June 7, 1897.
577	11	5316	11	5130–34	Printed...	Letter, B. D. Greene to Westcott, April 18, 1897.
578	11	5111	11	5110–12	Printed...	List of certain letters from O. M. Carter's letter press copy books from B-31, offered in evidence.
579	11	5113	11	5112–15	Printed...	List of certain letters received by O. M. Carter from Box B 31, offered in evidence.
580	11	5116	11	5115	Printed...	List of certain documents from Box B 31, offered in evidence.
581	11	5122	11	5120–1	Printed...	List of documents identified by E. I. Johnson as from Box B 31, offered in evidence.
582	11	5126	11	5125–7	Printed...	List of certain letters from official letter press copy books, office Engineers, Savannah, offered in evidence.
583	11	5128	11	5127–30	Printed...	List of certain documents previously offered. Greene Gaynor, removal, proceedings identified by E. I. Johnson, offered in evidence
584	11	5132	11	5130–4	Printed...	List of certain documents identified by E. I. Johnson as received from R. F. Westcott and others, offered in evidence.
585	11	5154	11	5153	Printed...	List of certain Exhibits offered in evidence.

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586	29	.....	11	5190–2	Blue Print.	Chronological table of securities purchased and sold in N. Y. and on hand at sundry dates, being the securities claimed by the United States as being purchased for acct. of O. M. Carter with diverted trust funds.
587	29	.....	11	5198	Blue Print.	Chronological table of all securities either bought or sold by Robert F. Westcott from Jan. 1, 1890, to Nov. 1, 1897, exclusive of securities claimed by United States as having been bought for O. M. Carter with diverted trust funds.
588	29	.....	11	5200	Blue Print.	Statement of acct. of R. F. Westcott with O. M. Carter from Oct. 19, 1891, to May 13, 1892, and O. M. Carter acct. during same period, compiled from O. M. Carter's check stub books, Exhibits 59 and 60 (Shields).
589	29	.....	11	5206–8	Blue Print.	Johnson's analysis of Exhibit C (Shields), being the R. F. Westcott, O. M. Carter atty. check stub book of account in Union Trust Co., N. Y., from Feb. 4, 1895, to May 11, 1896, during which period R. F. Westcott was in Europe
590	29	.....	11	5208	Blue Print.	Johnson's analysis of acct. of R. F. Westcott with transactions with O. M. Carter, compiled from Exhibits from July 22, 1892, to Oct. 29, 1897.
591	11	5316	11	5155	Printed...	Stock certificate, June 1, 1894, of Savannah Brewing Co., 12 shares in name of O. M. Carter.
592	11	5317	11	5155	Printed....	Stock certificate, June 29, 1905, of Savannah Brewing Co., 13 shares in name of O. M. Carter.
593	29	.....	11	5156	Blue Print.	Account of John F. Gaynor with American Exch. Nat. Bk., N. Y., from May 17, 1892, to May 28, '9[illegible]
594	11	5333–5	11	5156–7	Printed...	Mrs. M. W. Carter in account with the Garfield Nat. Bk., N.Y., with copies of deposit tickets.
595	11	5223	11	5223	Printed...	Description of Exhibits contained in Pltfs. Exhibit 319 (Wyman).
596	11	5227	11	5226–7	Printed...	Deed, Westcott to Carter, June 1, 1899, on partition of Orange property.

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97	29	.....	14	6353–60–79	Blue Print.	Statement of acct. of O. M. Carter with the Union Trust Co. of N. Y. from Oct. 19, 1891, to June 1, 1899, annotated by O. M. Carter and furnished by him through his attys to Atty.-General.
97A	11	Sent up 6379	14	6360–78	Original... Printed....	Letter, Carter to Wayne MacVeagh, June 20, 1898.
98	10	Sent up 4696	10	4696	Original... Printed...	Affidavit of Hartshorne showing payment by Union Trust Co., N. Y., Nov. 6, 1899, of R. F. Westcott check for $7,953.22, previously offered Parsons Record as Pff. Exhibit.
	14	6285	14	6284		
99	14	6291	14	6290	Printed...	Compilation of Bonds, stocks and notes included in receipts of Oct. 11 and 29, 1897 (Exh. 269, 272), and T. M. Cunningham note with reference to Exhibits, showing collections by and for account of O. M. Carter of last prior coupons, dividends and interest notes falling due prior to said receipts.
00	14	6598	12	5808–9	Printed...	Receipt of Safe Deposit Co. of N. Y. from Westcott and Carter of annual rent, Oct. 3, 1894, $35.
01	13	5917	13	5915–6	Printed...	Letter, O. M. Carter to I. S. Carter, Adm., April 16, 1887.
02	13	5918	13	5918	Printed...	Letter, O. M. Carter to I. S. Carter, Adm., April 28, 1889.
03	13	5928	13	5927–8	Printed...	Letter, I. G. Haas, Sec. and Tr. to O. M. Carter, April 25, 1891.
04	13	5930	13	5929–30–34	Printed...	Letter, Geo. MacNeill to Carter, July 20, 1888.
05	13	5935	13	5930–34	Printed...	Letter, Geo. MacNeill to B. D. Greene, July 26, 1888.
06	13	5949	13	5948–9	Printed...	Letter, Carter to Garfield Nat. Bk., N. Y., Jany. 12, 1893.
07	13	5950	13	5948–9	Printed...	Letter, Carter to Union Trust Co., N. Y., Jany. 12, 1893.
08	13	5952	13	5951	Printed...	Checks drawn by R. F. Westcott on Union Tr. Co., N. Y., to the order of Margaret W. Carter, Jany. 31, 1891, to Oct. 29, 1892.
09	13	5974	13	5973	Printed...	Personal report of Carter for April, 1893.
10	13	6039	13	6036–39	Printed...	Unpaid check, March 27, 1894, Westcott to Carter, $292.50, signature canceled.

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611	13	6050	13	6050	Printed...	Unpaid check, May 4, 1894, W... cott to Carter, $975, signa... torn off.
612	13	6053	13	6053	Printed...	Unpaid check, June 3, 1894, ... Westcott, $1,350, signature ... off.
613	....	Sent up	13	6069	Original...	Bill, Haas Bros., Aug. 6, 1... $102.75.
614	....	Sent up	13	6069	Original...	Bill, Kim Lung Co., Oct. 15, 1... $77.55.
616	13	6098	13	6097–8	Printed...	Bill, Tiffany & Co., paid March ... 1895, $312.
617	13	Sent up 6163	13	Original... 6162–3	Printed...	Letter, Carter to A. Minis, Dec. ... 1896.
618	14	6203	14	6202	Printed...	Affidavit, W. A. Mitchell, Sec... Safe Deposit Co. of N. Y., relat... to boxes rented by Carter ... Westcott.
619	14	6206	14	6206	Printed...	Affidavit of Beirne Gordon relat... to payment of notes.
620	29	.....	14	6235	Blue Print.	Statement of known disbursem... made by O. M. Carter to his r... tives, Jan. 1, 1893, to May 1, 1... compiled from Exhibits.
621	14	6286	14	6284	Printed...	Detailed statement of division ... Orange, N. J. property, ow... jointly by R. F. Westcott and ... M. Carter.
622	14	6312	14	6311	Printed...	Letter, O. M. Carter to I. S. Car... March 22, 1890.
623	14	6317	14	6316	Printed...	Letter, Carter to Wm. Garr... Nov. 24, 1891.
624	14	6447	14	6447	Printed...	Affidavit of T. W. Hartshorne a... items of credit on Jany. 11, 1... of $1,295 to account of R. ... Westcott.
625	14	6450	14	6448	Printed...	Affidavit of T. W. Hartshorne re... tive to sale of check stub book ... Union T. Co. to Carter, and ... balancing of Carter's account ... return of canceled checks.
626	14	6454	14	6449–50	Printed...	Affidavit of J. W. Sterley relativ... receipt of package by exp... Sept. 9, 1897, in U. T. Co. es... ope addressed to O. M. Car... and reshipment to Carter.
627	16	7562	16	7559–61	Printed...	Letter, O. M. Carter, Atty., to Un... Trust Co., Oct. 28, 1895.
628	16	7563	16	7560–1	Printed...	Letter, Carter to J. B. Solley, ... 28, 1895.
629	16	7564	16	7560–1	Printed...	Letter, Carter, Atty., to Union ... Co., Nov. 2, 1895.

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16	7565	16	7561	Printed...	Letter, Carter to J. B. Solley, Nov. 2, 1895.
16	7566	16	7561	Printed...	Letter, Carter, Atty., to Union Tr. Co., Nov. 9, 1895.
17	7939	17	7938–9	Printed...	Affidavit, Hartshorne, of Union Trust Co., N. Y., in relation to certification aad payment May 13, 1893, of R. F. Westcott check, $15,000.
18	8946	18	8699–700	Printed...	Letter, Carter to Cf. Clk. War Dept., June 4, 1896, inc. Form of Adv., S. H.
....	Sent up	18	8699–700	Original...	Specifications inc. in above.
18	8951	18	8700	Printed...	Letter, Carter to Cf. Clk. War Dept. June 4, 1896, inc., Form of adv., C. S.
....	Sent up	18	8700	Original...	Specifications inc. in above.
18	8956	18	8700	Printed...	Form of Adv. C. S., inc. in above.
	Sent up			Original...	
18	8957	18	8700–1	Printed...	Letter, Carter to Cf. Engs., Oct. 20, 1896, suggesting dropping part of Project. Endorsement of Col. P. C. Hains, disapproving.
18	8807	18	8806	Printed...	Agreement as to evidence, Dec. 20, 1902.
18	8813	18	8812	Printed...	Notice, Erwin to Stone, June 23, 1903, giving list of witnesses and of Exhibits to be used under agreement of Dec. 20, 1902.
29	.....	18	8814	Blue Print.	Complete list of documentary evidence from the Court Martial Record, offered in evidence by Complainant.
29	.....	18	8814–15	Blue Print.	Complete list of documentary evidence from removal proceedings (Shield's Record), offered in evidence by Complainant.
29	.....	18	8815–16	Blue Print.	Complete list of witnesses whose testimony in Court Martial record and whose testimony in Shields Record was offered in evidence in this proceeding by Complainant.
18	8904	18	8903	Printed...	Letter, Carter to Col. W. P. Craighill, May 22, 1888.
18	8905	18	8905	Printed...	Letter, Watson & Gibson to Carter, July 25, 1892.
18	8906	18	8906	Printed...	Letter, Carter to Watson & Gibson, Feb. 10, 1893.
18	8907	18	8906–7	Printed...	Letter, Watson & Gibson to Carter, Feb. 10, 1893.
18	8907	18	8906–7	Printed...	Letter, Watson & Gibson to Carter, Feb. 10, 1893.

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648	18	8908	18	8907	Printed...	Letter, Chief of Engineers to off... Corps Engs., U. S. A., July ... 1893, introducing French off...
649	18	8909	18	8908	Printed...	Letter of Carter to Austin M... July 1, 1895.
650	18	8910	18	8909	Printed...	Letter of Gen. N. A. Miles to Ca... Jan. 25, 1896.
651	18	8911	18	8910	Printed...	Letter of Carter to Abbot, April ... 1897.
652	18	8911	18	8911	Printed...	Letter of Carter to Cunard S. S. ... May 6, 1897.
654	18	8890	18	8889–90	Printed...	List made by Col. McClure, of pa... from Carter's box, Jan. 17, 1...
655	....	Sent up	18	8894–8900–8923–4	Original...	Gillette's memorandum of Carte... Diaries.
656	18	8912	18	8912	Printed...	Authorization of Carter to West... Feb. 15, 1901, to cancel Be... Gordon mortgage.
657	29	.....	18	8913	Blue Print.	Statement of collections by R. ... Westcott, of all coupons ... dividends on bonds and sto... held by him as per Exhibit ... from Jan. 1, 1892 to Oct. 29, 18... which are exclusive of securi... claimed by United States as p... chased for acct. of O. M. Car... with diverted trust funds.
658	29	.....	18	8913–4	Blue Print.	Statement of the aggregate ... divisions aggregate of depo... and of the aggregate of inve... ments held by O. M. Carter, ... corresponding dates from E... hibit 319, as claimed by t... United States.
659	....	Sent up	18	8922–3	Original...	Pencil memorandum of Carte... attached to 3 letters of Ge... year in box B 31.
660	18	8925	18	8924–5	Printed...	Affidavit of E. V. W. Rossiter, re... tive to alleged Grand Cen... Depot visits of R. F. Westcott.
661	18	8937	18	8937	Printed...	List of securities, etc., from Carte... letter press copy book, May, 18...
.....	1	92	10	4894	Printed...	Report, Whitney Recr., Sept. ... 1901, of demands for assets.
.....	1	297	10	4897	Printed...	Report, Whitney Recr., April ... 1903, as to assets.
.....	1	305	13	6160	Printed...	Report, Whitney Recr., Jan. ... 1904, as to assets.
.....	1	308	13	6160	Printed...	Report, Whitney Recr., Feb. ... 1905, as to assets.
.....	1	310	13	6160	Printed...	Report, Whitney Recr., Aug. ... 1906, as to assets.

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1	313	13	6160	Printed...	Report, Whitney Recr., Feb. 4, 1908, as to assets.
13	6116 6170	13	6116 6170	Printed...	Paragraphs 44 to 59, Army Regulations of 1889, relative to leaves of absence.
19	9309–62	11	5209–11	Printed...	N. Y. Pleadings, orders, etc.
19	9362–9404	11	5209–11	Printed...	N. J. Pleadings, orders, etc.
19	9404–49	11	5209–11	Printed...	W. Va. Pleadings, orders, etc.
19	9450–99	11	5209–11	Printed...	Ga. Pleadings, orders, etc.
19	9500–45	11	5209–11	Printed...	So. Dist. Ill., Pleadings, orders, etc.

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1	11	5222	11	5221–3	Printed...	Partial description of Exhibits co tained in Pltfs Exhibit 319 (W man.)
A2	11	5340	11	5339	Printed...	Affidavit of John D. Clarke.
B2	11	5341	11	5339	Printed...	Affidavit of Patrick Roche.
8	14	6500	12	5441	Printed...	Telegram, R. E. Westcott to Car March 26, 1891.
9	14	6500	12	5441	Printed...	Letter, R. F. Westcott to Car Aug. 26, 1892.
10A 10B 10C 10D 10E 10F 10G	19	9007-9187 Sent up	12	5367–71	Printed... Originals..	O. M. Carter's 7 Diaries, 1891-2-3 5-6-7.
11	14	6500	12	5380	Printed...	Bill of sale, Oct. 19, 1891, Char Conquest to Carter.
12	14	6501	12	5374–5–8	Printed...	Statement of R. F. Westcott, O 23, 1891. Subject affairs Char Conquest.
.....	12	5375	....	.....	.....	Pencil Memo., on back, made Carter.
		Sent up			Original...	
13	14	6502–6 Sent up	12	5378–9	Printed... Original...	Pencil Memo. of Carter on back letter of E. V. Skinner, of Oct. 1891, and letter of Cook & Son.
14	14	6506	12	5396–7	Printed...	Letter of E. P. Alexander to Car Oct. 30, 1891.
		Sent up			Original...	Pencil Memo. on back made Carter.
15	14	6507	12	5444	Printed...	Letter of Carter to Huey, Dec. 2 1891.
16	14	6509	12	5436	Printed...	Letter of R. F. Westcott to Car Dec. 20, 1891.
17	14	6511	12	5437–8	Printed...	Letter of R. F. Westcott to Car Jan. 1, 1892.
18	14	6511	12	5437	Printed...	Cablegram of R. F. Westcott to E. Westcott, Feb. 10, 1892.
18A	14	6511	12	5437	Printed...	Cablegram of R. F. Westcott to Carter, Feb. 10, 1892.
18B	14	6512	12	5441	Printed...	Telegram of R. E. Westcott Carter, Feb. 10, 1892.
19	14	6512	12	5437	Printed...	Cablegram of R. F. Westcott to E. Westcott, Feb. 12, 1892.
20	14	6512	12	5437	Printed...	Cablegram of R. F. Westcott Carter, Feb. 15, 1892.
21	14	6513	12	5437–8	Printed...	Letter of R. F. Westcott to Car Feb. 25, 1892.
22	14	6514	12	5441–2	Printed...	Letter of R. E. Westcott to Car Feb. 26, 1892.
23	14	6514	12	5442	Printed...	Telegram, R. E. Westcott to Car Feb. 27, 1892.

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24	14	6515	12	5442	Printed...	Letter of R. E. Westcott to Mrs. Conquest, Feb. 29, 1892.
25	14	6515	12	5442	Printed...	Letter of R. E. Westcott to Carter, March 1, 1892.
26	14	6516	12	5438	Printed...	Letter of R. F. Westcott to Carter, about March 1, 1892 with Memo., "Do not copy this page."
		Sent up			Original...	
27	14	6517	12	5439	Printed...	Cablegram, R. F. Westcott to Carter, March 5, 1892.
28	14	6517	12	5439	Printed...	Letter of R. F. Westcott to Carter, March 5, 1892.
29	14	6518	12	5443	Printed...	Letter of Mrs. Westcott to Carter, March 5, 1892.
30	14	6519	12	5442–3	Printed...	Letter of R. E. Westcott to Carter, March 5, 1892.
31	14	6520	12	5439	Printed...	Letter of R. F. Westcott to Carter, March 16, 1892.
32	14	6521	12	5443	Printed...	Letter of Mrs. Westcott to Carter, March 18, 1892.
33	14	6521	12	5439–40	Printed...	Letter of R. F. Westcott to Carter, March 19, 1892.
34	14	6522	12	5443	Printed...	Letter of R. E. Westcott to Carter, March 19, 1892.
35	14	6523	12	5440	Printed...	Cablegram, R. F. Westcott to Carter, March 23, 1892.
36	14	6523	12	5443–4	Printed...	Letter of Mrs. Westcott to Carter, March 23, 1892.
37	14	6524	12	5440	Printed...	Letter of R. F. Westcott to Carter, March 27, 1892.
38	14	6525	12	5440–1	Printed...	Cablegram of R. F. Westcott to Carter, March 27, 1892.
39	14	6525	12	5441	Printed...	Cablegram of R. F. Westcott to Carter, March 28, 1892.
40	14	6525	12	5444	Printed...	Letter of E. L. Hamilton to Carter, Dec. 29, 1892.
41	14	6526	12	5444	Printed...	Letter of E. L. Hamilton to Carter, Dec. 30, 1892.
42	14	6526–7	12	5445	Printed...	Letter of C. H. Van Deventer to Carter, Dec. 30, 1892.
42	14	6526–7	12	5445	Printed...	Letter of C. H. Van Deventer to Carter, Dec. 30, 1892.
42	14	6526–7	12	5445	Printed...	Statement of C. H. Van Deventer to Carter, Dec. 30, 1892.
43	14	6527	12	5545	Printed...	Letter, J. King, Secry. to Carter, Dec. 30, 1892.
44	14	6528	12	5380–1	Printed...	Letters of administration to O. M. Carter, with pencil memo. made by Carter.
		Sent up			Original...	
45	14	6535	12	5447	Printed...	Letter of Carter to J. King, Secy., Jan. 6, 1893.

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46	12	5449	12	5449	Printed...	Deposit ticket, O. M. Carter with Merchants Nat. Bk., Savannah Jan. 6, 1893, $950.
47	14	6536	12	5382–3	Printed...	French poem with pencil memo.
		Sent up			Original ...	made by Carter.
48	14	6537	12	5447	Printed...	Letter of Carter to Watson & Gibson, Feb. 16, 1893.
49	14	6537	12	5456	Printed...	Letter of Carter to Union Tr. Co. N. Y., March 4, 1893.
50	12	5449	12	5449	Printed...	Deposit ticket, O. M. Carter with Merchants Nat. Bk., Savannah March 4, 1893, $650.
51	14	6538	12	5391–3	Printed...	Pencil memo. made by Carter with
		Sent up			Original...	clippings attached.
52	14	6538	12	5388–91	Printed...	Memo. book of Carter's with de-
		Sent up			Original...	tached leaves.
53	14	6540	12	5393	Printed...	Sheet of paper with memo. made by
		Sent up			Original...	Carter.
54	14	6541	12	5445	Printed...	Letter, Reed & Flagg to R. F. Westcott, July 26, 1893.
55	14	6495	14	6494	Printed...	Bill of U. S. Hotel Saratoga, Sept. 16, 1893.
56	14	6542	12	5399–5400	Printed...	Poem, "Little Mag" with pencil
		Sent up			Original...	memo. made by Carter.
57	14	6543	12	5445	Printed...	Letter of Reed & Flagg to Carter, Sept. 23, 1893.
58	24	11891	12	5445–6	Printed...	Letter of Reed & Flagg to Carter, Sept. 14, 1893.
.....	11	5318			Printed...	Same as Dft. G. 5 (Shields).
59	14	6545	12	5401–3	Printed...	Memo. in pencil by Carter on pass of Health Officer, dated Sept. 27, 1893.
		Sent up			Original...	
60	14	6545	12	5403–4	Printed...	Memo. in pencil by Carter on cer-
		Sent up			Original...	tificate of Nov. 24, 1893.
61	14	6546	12	5450	Printed...	Bill, Manhattan Stge. & Whe. Co., Jan. 12, 1894, $40.92.
62	14	6547	12	5405	Printed...	Ck., R. F. Westcott to Carter, Mch.
		Sent up			Original...	6, 1894, $2,000.
63	14	6547	12	5406	Printed...	Ck. R. F. Westcott to Carter, May 25, 1894, $960.
		Sent up			Original...	
64	14	6548	12	5406–7	Printed...	Memo. in pencil by Carter on back
		Sent up			Original...	of letter of July 24, 1894, from Sallie Nelson Robbins.
65	14	6549	12	5410–11	Printed...	Pencil memo. made by Carter on
		Sent up			Original...	insurance policy.
66	14	6550	12	5412–3	Printed...	Letter, M. J. and R. F. Westcott to
		Sent up			Original...	E. L. Hamilton, Jany. 29, 1895.
67	14	6551	12	5446	Printed...	Letter of Reed & Flagg to Carter, March 5, 1895.

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68	14	6552	12	5446	Printed...	Letter of Reed & Flagg to Carter, March 8, 1895.
69	14	6553	12	5448	Printed...	Letter of Carter to Reed & Flagg, March 11, 1895.
70	14	6553	12	5446	Printed...	Letter of Reed & Flagg to Carter, March 13, 1895.
71	14	6554	12	5446	Printed...	Letter of Reed & Flagg to Carter, March 22, 1895.
72	14	6555	12	5448	Printed...	Letter of Carter to Reed & Flagg, March 25, 1895.
73A	12	5414	12	5414–16	Printed...	Extracts from Carter's memo book.
73B	12	5416	12	5416–17	Printed...	Extracts from Carter's memo. book.
73C	12	5417	12	5417–18	Printed...	Extracts from Carter's memo. book.
		Sent up			Originals..	Memo. book sent up.
74	14	6556	12	5448	Printed...	Letter of Carter to Reed & Flagg, May 8, 1895.
76	14	6556	12	5447	Printed...	Letter of J. B. Solley to Carter, June 10, 1895.
77	14	6558	12	5446	Printed...	Letter of Reed & Flagg to Carter, March 26, 1896.
78	14	6558	12	5450	Printed...	Letter of J. B. Solley to Carter, April 21, 1896.
79	14	6559	12	5448–9	Printed...	Letter of Carter to Thos. Martin, Nov. 11, 1896.
80	14	6559	12	5418–9	Printed...	Pencil memo. made by Carter on tax receipt.
		Sent up			Original...	
81	14	6561	12	5435–6	Printed...	Will of R. F. Westcott with codicils.
82	14	6566	12	5449	Printed...	Letter of Carter to T. M. Cunningham, Dec. 28, 1896.
83	14	6566–7	12	5421	Printed...	Letter, Union Tr. Co. to B. Gordon, Dec. 30, 1896.
		Sent up			Original...	Note, B. Gordon, Nov. 4, 1896, due Jany. 1, 1897, $93.70.
84	14	6567	12	5449	Printed...	Letter, Carter to B. Gordon, Jany. 14, 1897.
85	14	6568	12	5447	Printed...	Letter, B. Gordon to Carter, Feby. 20, 1897.
86	14	6569	12	5421	Printed...	Letter, Union Tr. Co. to B. Gordon, June 30, 1897.
		Sent up			Original...	Note, B. Gordon, Nov. 4, 1896, due July 1, 1897, $300.
87	14	6570	12	5450	Printed...	Letter of Reed & Flagg to O. M. Carter, Oct. 19, 1897.
88	14	6571	12	5522–3	Printed...	Copy of letter, dated Oct. 4, 1897, claimed by Carter to have been received from R. F. Westcott relative to board.
89A	14	6571	12	5425–7	Printed...	Copy of letter not dated, purporting to be from "Daddy" to "Oberlin," relative to board, with pencil interlineations.
89B	14	6572	12	5431	Printed...	Copy same as corrected.

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89C	14	6572	12	5431–2	Printed...	Copy 89A, redrafted, same as draft of letter marked "W" attached to Dfts. Ex. 3. Parsons, identified by Rose as letter Westcott refused to sign. R. Vol. 10, p. 4692–4695, 88, 89A, 89B, 89C sent up.
		Sent up			Originals..	
90	14	6573	12	5421–2	Printed...	Letter, R. F. Westcott to Carter, Oct. 18, 1897.
		Sent up			Original...	
91	12	5453	12	5453	Printed...	Letter, J. F. Gaynor to O. M. Carter, Oct. 19, 1897.
92	14	6574	12	5451	Printed...	Letter of Reed & Flagg to Carter, Oct. 21, 1897.
93	14	6575	12	5451–2	Printed...	Letter of Reed & Flagg to Carter, Oct. 26, 1897.
94	14	6576	12	5452	Printed...	Letter of Reed & Flagg to Col. Gillespie, Oct. 26, 1897.
95 95A	14	6577	12	5454–5	Printed...	Depositions of R. W. Tailor, rejected by Court Martial, offered by Deft. before Wyman.
96A	20	9552	12	5354–5	Printed...	R. F. Westcott in acct. with O. M. Carter, Dec. 22, 1892, to May 2, 1893.
96B	20	9549	12	5366–67	Printed...	Account of Transactions between R. F. Westcott and O. M. Carter, Oct. 19, 1891, to Dec. 13, 1892.
96C	20	9561	12	5523–24	Printed...	Account between R. F. Westcott and O. M. Carter, May 2, 1893, to Dec. 31, 1893.
96D	20	9570	12	5561	Printed...	Account between R .F. Westcott and O. M. Carter, Jany. 1 to Dec. 31, 1894.
96E	20	9592	12	5584	Printed...	Account of R. F. Westcott with the Union Tr. Co., O. M. Carter, atty.
96F	20	9577	12	5614–5	Printed...	Account between R. F. Westcott and O. M. Carter, Jany. 1, 1895 to Oct. 29, 1897.
96G	20	9591	12	5729–31	Printed...	Summary of transactions between R. F. Westcott and O. M. Carter as to estate of Carter's wife.
97	14	6582	12	5452–3	Printed...	Letter of Col. G. L. Gillespie to Carter, Oct. 29, 1897.
98	14 20	6583 9603	12	5554–5	Printed...	Collection of coupons by Westcott.
99	14	6583	12	5723	Printed...	Letter of Carter to Board of Officers, Sept. 21, 1897. consenting to examination of papers.
100	14	6585	12	5723	Printed...	Letter of Carter to Board of Offiers, Nov. 3, 1897.
101	14	6588	12	5726–29	Printed...	Copy of letter claimed by Carter to have been sent to Pres. McKinley, June 17, 1901, with department statement as to original not being on file.

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102	14	6594	12	5724–6	Printed...	Letter of Jere Wilson to Atty. Genl., July 10, 1901.
103	12	5771	12	5770	Printed...	Letter of Barr, Judge Adv. to Carter, Jany. 19, 1898.
	14	6596				
104	14	6597	12	5816–7	Printed...	Affidavit of W. A. Mitchell, Secry. of Safe Dep. Co. of N. Y.
105	13	5994	13	5993–4	Printed...	Letter, Goethals to Carter, Sept. 5, 1896.
106	13	6175	13	6173–5	Printed...	Leaf from R. F. Westcott's ck. stub book (Pff. 561), produced by Carter.
		Sent up			Original...	
107	13	6176	13	6175–6	Printed...	Letter of H. L. Stimson to Mr. Rose, Oct. 29, 1897.
108	14	6495	14	6495	Printed...	Letter of G. W. Goethals to Carter, July 13, 1897.
109	29	.....	16	7514–5	Blue Print.	Pass book of R. F. Westcott with Union Trust Co., N. Y. From Sept. 22, 1891 to Dec. 4, '93
		Sent up			Original...	
110	29	.....	16	7514	Blue Print.	Pass book of R. F. Westcott with Union Trust Co., N. Y. From Dec. 5, '93, to Nov. 7, '95.
		Sent up			Original...	
111	19	9189	17	8029–37	Printed...	Specifications and contracts from certain other districts.
112	19	8962	17	8224	Printed...	Letter, Goodyear to Carter, Nov. 14, 1892.
112	19	8963	17	8224	Printed...	Letter, Goodyear to Carter, Dec. 4, 1892.
112	19	8963	17	8224	Printed...	Letter, Goodyear to Carter, Dec. 6, 1892.
112	19	8964	17	8224	Printed...	Letter, Goodyear to Carter, Dec. 22, 1892.
112	19	8964	17	8224	Printed...	Letter, Goodyear to Carter, Dec. 25, 1892.
112	19	8965	17	8224	Printed...	Letter, Goodyear to Carter, Jan. 16, 1893.
112	19	8965	17	8224	Printed...	Letter, Goodyear to Carter, Jan. 28, 1893.
113	19	8966	17	8224	Printed...	Letter, Goodyear to Carter, Nov. 24, 1892.
....	....	8967	....	.....	Printed...	Telegram, Goodyear to Rees, Dec. 2, 1892.
114	17	8243	17	8243	Printed...	Telegram of Gilette to A. J. Twiggs, March 14, 1898.
115	17	8248	17	8248	Printed...	Letter of Venable to Carter, Sept. 24, 1897.
116	19	8968	17	8374	Printed...	Report of Hughes, Inspector Genl. of army, June 26, 1889, in re Curtis charges.
117	19	8982	17	8398	Printed...	Report of Geo. F. Edmunds to Secry. of war, Oct. 8, 1898.
118	17	8414	17	8414	Printed...	Letter of J. M. Wilson to Carter, March 31, 1897.

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119	17	8416	17	8415	Printed...	Letter of Goethals to Carter, Au 27, 1897.
120	17	8421	17	8420	Printed...	Letter of Carter to Chief of Eng May 27, 1897.
121	18	8850–4	17	8424	Printed...	Sundry letters and reports of Twiggs to Carter, under Contr 6517 C. S.
122	18	8793	18	8791–3	Printed...	Letter, R. G. Ross to Carter, Se 25, 1897.
123	18	8795	18	8794–5	Printed...	Affidavit of E. B. Parker.
124	18	8796	18	8796	Printed...	Telegram, Wilson Chief Engrs. Carter, Sept. 17, 1897.
125	18	8798	18	8797	Printed...	Affidavit of W. B. Cutting.
126	18	8799	18	8797	Printed...	Affidavit of H. R. Duval.
127	18	8805	18	8805	Printed...	Letter, Wilson Chief Engrs. Carter, July 31, 1897.
128	18	8997–8	18	8816	Printed...	Notice, Feb. 16, 1904, Stone Erwin, of list of witnesses Court Martial and Removal Pro ceedings, whose testimony wou be used in this cause, with list.
129	29	.....	18	8816	Blue Print.	Complete list of Exhibits an documentary evidence from Re moval Proceedings, (Shields Rec offered in evidence by Defendan
130	29	.....	18	8816	Blue Print.	Complete list of Exhibits and docu mentary evidence from the Cour Martial record offered in eviden by Defendants.
131	....	Sent up	18	8882–3	Original...	Regulations for Government Cor of Engrs., U. S. A., Feb. 4, 1886
132	18	8823	18	8823	Printed...	Letter, A. S. Cooper to Carter March 13, 1891.
133	18	8824	18	8824	Printed...	Letter, Craighill to Carter, Nov. 7 1893.
134	18	8825	18	8825	Printed...	Letter, Craighill to Carter, Nov. 15 1893.
135	18	8826	18	8826	Printed...	Memo. of Carter for Vaughan & Grimes, May 10, 1895.
136	18	8827	18	8827	Printed...	Letter of Hains to Black, Nov. 20 1895.
137	18	8828	18	8828	Printed...	Letter of Hains to Carter, Dec. 1 1895.
138	18	8829	18	8828	Printed...	Letter of Black to Carter, Nov. 25 1895.
139	18	8830	18	8829	Printed...	Letter of Black to Carter, Nov. 27 1895.
140	18	8831	18	8830	Printed...	Letter of Goethals to Carter, Dec 28, 1895.
141	18	8833	18	8832	Printed...	Order of Gen. Miles, Jan. 23, 1896
142	18	8834	18	8833	Printed...	Letter of Carter to Col. Benyoussef April 8, 1897.

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143	18	9000–5	18	8835	Printed...	Vouchers 26 and 27 of Carter, May, 18, 1897, on trips to Fernandina and Brunswick.
144	18	8836	18	8835–6	Printed...	Telegram, Wilson Cf. Engrs. to Carter, May 26, 1897.
145	18	8836	18	8836	Printed...	Letter of Gillette to Carter, July 8, 1897.
146	18	8837	18	8837	Printed...	Telegram of Gillette to Chief of Engrs., Sept. 16, 1897.
147	18	8838	18	8837	Printed...	Telegram of Gillette to Chief of Engrs., Sept. 17, 1897.
148	18	8838	18	8838	Printed...	Letter of Gillette to A. S. Cooper, Oct. 2, 1897.
149	18	8839	18	8839	Printed...	Letter of Gillette to M. Twiggs, Oct. 2, 1897.
150	29	.....	18	8843–4	Blue Print.	Dimension of Mattresses, compilation from tri monthly reports of Inspectors, Contract No. 4960, of 1892, Sav. Harbor.
151	18	8844	18	8844	Printed...	Letter of Carter to Gillmore, April 19, 1885.
152	18	8845	18	8845	Printed...	Letter of Carter to Felber, Inspector Oct. 12, 1892.
153	18	8846	18	8846	Printed...	Letter of Carter to Ensey, Inspector, Feb. 14, 1893.
154	18	8938	18	8938	Printed...	Letter of Pradt, Asst. Atty. Genl. to Secy War, Aug. 10, 1897.
154A	18	8941	18	8938	Printed...	Petition in Court of Claims of Willink vs. U. S.
154B	18	8944	18	8938	Printed...	Letter, Gillette to Chief of Engrs., Oct. 8, 1897.

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1	23	10594	23	10589–93	Printed...	Letter, Barrow & Osborne to Capt. Carter, Sept. 4, 1896.
2	23	10595	23	10589–93	Printed...	Letter, Barrow & Osborne to Capt. Carter, Sept. 4, 1896.
3	23	10596	23	10592–3–4	Printed...	Letter, Carter to Barrow & Osborne, Sept. 4, 1896.
4	23	10597	23	10592–3–4	Printed...	Letter, Carter to R. A. Johnson, Sept. 4, 1896.
5	23	10645	23	10618–19 10642–44	Printed...	Letter, Hunting & Co., to Carter, Sept. 21, 1894.
6	23	10646	23	10642–44	Printed...	Letter, Carter to Hunting & Co., Sept. 21, 1894.
7	23	10646	23	10642–44	Printed...	Letter, Carter to Brandt, Sept. 21, 1894.
8	23	10655	23	10647–8 10652	Printed...	Letter, B. D. Greene to Carter, Oct. 25, 1888.
9	23	10656	23	10648–52	Printed...	Letter, J. F. Gaynor to B. D. Greene, April 28, 1889.
10	23	10657	23	10648–52	Printed...	Letter, B. D. Greene to Carter, Jan. 22, 1891.
11	23	10658	23	10649–52	Printed...	Letter, W. G. Austin to Carter, Sept. 22, 1892.
12	23	10651	23	10650–1–2	Printed...	List of letters of O. M. Carter from press book signatures identified.
13	23	10660	23	10659	Printed...	Service History, O. M. Carter.
14	23	10664	23	10650-1-61-4	Printed...	Letter, Carter to Duane, Apr. 10,'88
15	23	10666	23	10650-1-65-6	Printed...	Letter, Carter acknowledging receipt of his Com. as Captain, March 12, 1891.
16	23	10667	23	10650–1–66	Printed...	Letter, Carter to Hay, stating Appt. as Military attache, June 1, 1897.
17	23	10668	23	10650-1-67-8	Printed...	Letter, Carter to Alger as to appt. on Nicaragua Canal Com. July 17, 1897.
18	23	10670	23	10650-1-69-70	Printed...	Letter, Carter to Brawley, June 21, 1885.
19	23	10671	23	10650–1–71	Printed...	Letter, Carter to J. F. Gaynor, Nov. 2, 1885.
20	23	10672	23	10650–1–72	Printed...	Letter, Carter to B. D. Greene, June 24, 1886.
21	23	10673	23	10650–1–73	Printed...	Letter, Carter to B. D. Greene, Aug. 2, 1886.
22	23	10674	23	10650-1-73-4	Printed...	Letter, Carter to B. D. Greene, Jan. 1888.
23	23	10676	23	10650–1–76	Printed...	Letter, Carter to J. R. Gilmore, April 23, 1888.

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24	23	10678	23	10650–1–77	Printed...	Letter, Carter to B. D. Greene, May 24, 1888.
25	23	10680	23	10650–1–79	Printed...	Letter, Carter to B. D. Greene, June 11, 1888.
25A	23	10681	23	10650–1–80	Printed...	Letter, Carter to B. D. Greene, Aug. 23, 1888.
25B	23	10683	23	10650–1–82	Printed...	Letter, Carter to B. D. Greene, Sept. 1, 1888.
25C	23	10684	23	10650–1–83	Printed...	Letter, Carter to B. D. Greene, Sept. 23, 1888.
26	23	10687	23	10650–1–86	Printed...	Letter, Carter to B. D. Greene, Nov. 22, 1888.
27	23	10690	23	10650–1–89	Printed...	Letter, Carter to B. D. Greene, May 26, 1889.
28	23	10692	23	10650–1–91	Printed...	Telegram, Carter to B. D. Greene, June 6, 1889.
29	23	10693	23	10651–0–91	Printed...	Telegram, Carter to B. D. Greene, June 6, 1889.
30	23	10694	23	10650–1–91	Printed...	Letter, Carter to B. D. Greene, June 6, 1889.
31	23	10696	23	10650–1–95	Printed...	Letter, Carter to B. D. Greene, Jan. 22, 1890.
32	23	10697	23	10650–1–96	Printed...	Letter, Carter to Rossiter, March 27, 1891.
33	23	10698	23	10650–1–97	Printed...	Letter, Carter to Webb, April 6, '91.
34	23	10699	23	10650–1–99	Printed...	Letter, Carter to Bassett, March 30, 1891.
35	26	13131	23	10731–2	Printed...	Stock certificate book of Empire Constr. Co.
36	....	Sent up	23	10749	Original...	Ck. Stub book O. M. C., 1882–3.
37	....	Sent up	23	10732	Original...	Ck. stub book, O. M. C., 1883–4.
38	....	Sent up	23	10749	Original...	Ck. stub book, O. M. C., 1884.
39 to 58	31	.....	23	10732–47–49 10939–45	Blue Print.	Ck. stub books, O. M. Carter on Mer. N. Bk. Sav. Ga., 1888 to 1897. Originals also sent up.
	31	.....	11	5142–49	Blue Print.	
59 to 66	31	.....	23	10732–47–49	Blue Print.	Ck. stub books O. M. Carter on Union T. Co., N. Y., 1891–95. Originals also sent up.
			23	10939–45		
	31	.....	11	5142–49	Blue Print.	
67	31	.....	23	10732–47–49	Blue Print.	Ck. stub book, R. F. Westcott, O. M. Carter, Atty. on Union T. Co., 1895–6. Original also sent up.
			23	10939–45		
			11	5142–49	Blue Print.	
67½	23 14	10739 6583	23	10737–8	Printed...	Letter, Carter to Board, Sept. 21, '97 relative to papers in File Case.
68	31	.....	23	10749–50	Blue Print.	List of Jetty contracts, 1884 to 1897.
69	22	9867	23	10750–2	Printed...	Jetty, Contr., 2744 S. H., Sept. 1, 1884.
70	23	10753	23	10750–2–3	Printed...	Letter, Q. A. Gilmore to Carter, April 21, 1885.
71	23	10755	23	10750–2–3	Printed...	Letter, Q. A. Gilmore to Carter, April 17, 1885.
72	23	10757	23	10750–2–3	Printed...	Letter, J. F. Gaynor to Carter, April 11, 1885.
73	23	10758	23	1075 –2–3	Printed...	Endorsement, Carter on Exh. 72.

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74	22	9911	23	10750–2–9	Printed . . .	Jetty, Contr., 3282, S. H., Oct. 1886.
75	22	9921	23	10750–2–9	Printed . . .	Sup. Contr., 3282, S. H., Dec. 1886.
76	22	9961	23	10750–2–9	Printed . . .	Jetty, Contr., 3890, S. H., Jan. 1889.
77	22	10037	23	10750–2–9	Printed . . .	Jetty, Contr., 4224, S. H., Nov. 1890.
78	22	10147	23	10750–2–9	Printed . . .	Jetty, Contr., 4960, S. H., Oct. 1892.
79	22	10349	23	10750–2–60	Printed . . .	Jetty, Contr., 6515, S. H., Oct. 8,
80	22	9877	23	10750–2–61	Printed . . .	Jetty, Contr., 2824, C. S., Sept. 1884.
81	22	9927	23	10750–2–61	Printed . . .	Jetty, Contr., 3285, C. S., Oct. 29,
82	22	9987	23	10750–2–61	Printed . . .	Jetty, Contr., 3905, C. S., Jan. 1889.
83	22	10075	23	10750–2–62	Printed . . .	Jetty, Contr., 4572, C. S., May 4,
84	22	10125	23	10750–2–62	Printed . . .	Jetty, Contr., 4820, C. S., Sept. 1892.
85	22	10305	23	10750–2–62	Printed . . .	Jetty, Contr., 5811, C. S., Nov. 1894.
86	22	10373	23	10750–2–62	Printed . . .	Jetty, Contr., 6517, C. S., Oct. 8,
87	22	9939	23	10750–2–62	Printed . . .	Jetty, Contr., 3307, B. H., Oct. 1886.
88	22	10003	23	10750–2–63	Printed . . .	Jetty, Contr., 4037, B. H., May 1889.
89	22	10057	23	10750–2–63	Printed . . .	Jetty, Contr., 4517, B. H., March 1891.
90	22	10259	23	10750–2–63	Printed . . .	Jetty, Contr., 5254, B. H., March 1893.
91	22	10093	23	10750–2–64	Printed . . .	Jetty, Contr., 4637, Ft. C., July 1891.
92	22	10193	23	10750–2–65	Printed . . .	Jetty, Contr., 5127, D. H., Dec. 1892.
93	22	10215	23	10750–2–65	Printed . . .	Jetty, Contr., 5133, A. R., Dec. 1892.
94	22	10237	23	10750–2–65	Printed . . .	Jetty, Contr., 5253, J. Ck., March 1893.
95	22	10325	23	10750–2–65	Printed . . .	Jetty, Contr., 6049, A. R., April 1895.
96	22	9887	23	10750–2–66	Printed . . .	Jetty, Contr., 2933, A. R., Dec. 1884.
97	22	9899	23	10750–2–67	Printed . . .	Jetty, Contr., 2934, S. R., Dec. 1884.
98	22	9949	23	10750–2–67	Printed . . .	Jetty, Contr., 3392, S. R., Feb. 1887.
99	22	10019	23	10750–2–67	Printed . . .	Jetty, Contr., 4092, S. R., Sept. 1889.
100	22	10109	23	10750–2–67	Printed . . .	Jetty, Contr., 4655, S. R., Sept. 1891.
101	22	10175	23	10750–2–67	Printed . . .	Jetty, Contr., 4963, S. R., Oct. 1892.
102	22	10279	23	10750–2–69	Printed . . .	Jetty, Contr., 5359, S. R., Jul

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102	22	10299	23	11149	Printed...	Sup. Contr., 5359, S. R., Nov. 6, '93.
103	21	9638	23	10778	Printed...	Proposal for Contr. 4224, J. F. Gaynor.
104	21	9653	23	107778	Printed...	Proposal for Contr. 4572, J. F. Gaynor.
105	23	10782	23	10778–9	Printed...	Report, Meigs to Carter, Aug. 13,'91.
106	31	.....	23	10779	Blue Print.	Report, Meigs to Carter, May, '91.
107	31	.....	23	10779	Blue Print.	Report, Meigs to Carter, June, '91.
108	31	.....	23	10815–16	Blue Print.	List of guarantors and bondsmen, 1884–87.
109	21	9609	23	10815–16–17	Printed...	Proposal for Contr. 2744, J. F. Gaynor.
110	21	9802	23	10815–16–17	Printed...	Bond, for Contr. 2744, J. F. Gaynor.
111	21	9806	23	10815–16–17	Printed...	Bond for Contr. 2934, E. H. Gaynor.
112	21	9804	23	10815–16–17	Printed...	Bond for Contr. 2933, E. H. Gaynor.
113	21	9614	23	10815–16–17	Printed...	Proposal for Contr. 3283, Dredg.
114	21	9810	23	10815–16–17	Printed...	Bond for Contr. 3283, J. F. Gaynor.
115	21	9611	23	10815–16–17	Printed...	Proposal for Contr. 3282, J. F. Gaynor.
116	21	9808	23	10815–16–17	Printed...	Bond for Contr. 3282, J. F. Gaynor.
117	21	9616	23	10815–16–17	Printed...	Proposal for Contr. 3285, A. M. Bangs.
118	21	9812	23	10815–16–17	Printed...	Bond for Contr. 3285, A. M. Bangs.
119	21	9619	23	10815–16–17	Printed...	Proposal for Contr. 3307, E. H. Gaynor.
120	21	9814	23	10815–16–17	Printed...	Bond for Contr. 3307, E. H. Gaynor.
121	21	9622	23	10815–16–17	Printed...	Proposal for Contr. 3392, J. F. Gaynor.
122	21	9816	23	10815–16–17	Printed...	Bond for Contr. 3392, J. F. Gaynor.
123	21	9624	23	10815–16–17	Printed...	Proposal for Contr. 3890, W. T. Gaynor.
124	21	9818	23	10815–16–17	Printed...	Bond for Contr. 3890, W. T. Gaynor
125	21	9627	23	10815–16–17	Printed...	Proposal for Contr. 3905, A. M. Bangs.
126	21	9820	23	10815–16–17	Printed...	Bond for Contr. 3905, A. M. Bangs.
127	21	9631	23	10815–16–17	Printed...	Proposal for Contr. 4037, C. C. Ely.
128	21	9822	23	10815–16–17	Printed...	Bond for Contr. 4037, C. C. Ely.
129	21	9635	23	10815–16–17	Printed...	Proposal for Contr. 4092, J. F. Gaynor.
130	21	9824	23	10815–16–17	Printed...	Bond for Contr. 4092, J. F. Gaynor.
131	21	9826	23	10815–16–17	Printed...	Bond for Contr. 4224, J. F. Gaynor.
132	21	9643	23	10815–16–17	Printed...	Proposal for Contr. 4517, J. F. Gaynor.
133	21	9828	23	10815–16–17	Printed...	Bond for Contr. 4517, J. F. Gaynor.
134	21	9831	23	10815–16–17	Printed...	Bond for Contr. 4572, J. F. Gaynor.
135	21	9659	23	10815–16–17	Printed...	Proposal for Contr. 4637, W. H. Walsh.
136	21	9833	23	10815–16–17	Printed...	Bond for Contr. 4637, W. H. Walsh.
137	21	9669	23	10815–16–17	Printed...	Proposal for Contr. 4655, J. F. Gaynor.
138	21	9835	23	10815–16–17	Printed...	Bond for Contr. 4655, J. F. Gaynor.

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139	21	9678	23	10815-16-17	Printed...	Proposal for Contr. 4820, E. H. Gaynor.
140	21	9837	23	10815-16-17	Printed...	Bond for Contr. 4820, E. H. Gaynor.
141	21	9699	23	10815-16-17	Printed...	Proposal for Contr. 4960, Atl. C. Co.
142	21	9839	23	10815-16-17	Printed...	Bond for Contr. 4960, Atl. C. Co.
143	21	9710	23	10815-16-17	Printed...	Proposal for Contr. 4963, W. H. Walsh.
144	21	9842	23	10815-16-17	Printed...	Bond for Contr. 4963, W. H. Walsh.
145	21	9714	23	10815-16-17	Printed...	Proposal for Contr. 5127, Atl. C. Co.
146	21	9844	23	10815-16-17	Printed...	Bond for Contr. 5127, Atl. C. Co.
147	21	9717	23	10815-16-17	Printed...	Proposal for Contr. 5133, Atl. C. Co.
148	21	9846	23	10815-16-17	Printed...	Bond for Contr. 5133, Atl. C. Co.
149	21	9721	23	10815-16-17	Printed...	Proposal for Contr. 5253, Atl. C. Co.
150	21	9848	23	10815-16-17	Printed...	Bond for Contr. 5253, Atl. C. Co.
151	21	9727	23	10815-16-17	Printed...	Proposal for Contr. 5254, Atl. C. Co.
152	21	9851	23	10815-16-17	Printed...	Bond for Contr. 5254, Atl. C. Co.
153	21	9740	23	10815-16-17	Printed...	Proposal for Contr. 5811, A. M. Bangs.
154	21	9853	23	10815-16-17	Printed...	Bond for Contr. 5811, A. M. Bangs.
155	21	9758	23	10815-16-17	Printed...	Proposal for Contr. 6049, W. T. Gaynor.
156	21	9855	23	10815-16-17	Printed...	Bond for Contr. 6049, W. T. Gaynor
157	21	9786	23	10815-16-17	Printed...	Proposal for Contr. 6515, Atl. C. Co.
158	21	9857	23	10815-16-17	Printed...	Bond for Contr. 6515, Atl. C. Co.
159	21	9791	23	10815-16-17	Printed...	Proposal for Contr. 6517, Atl. C. Co.
160	21	9860	23	10815-16-17	Printed...	Bond for Contr. 6517, Atl. C. Co.
161	31	.....	23	10819-20-24	Blue Print.	Table of contents, size and length of advertisements, 1890 to 1897.
162	31	.....	23	10825-27-30	Blue Print.	Abstract of applications for specifications S. H., 4960 of 1892.
163	31	.....	23	10829-30	Blue Print.	Abstract of applications for specifications C. S., 4820 of 1892.
164	31	.....	23	10829-30	Blue Print.	Abstract of applications for specifications C. S., 5811 of 1894.
165	31	.....	23	10828-30	Blue Print.	Abstract of applications for specifications S. H., 6515 of 1896.
166	31	.....	23	10828-30	Blue Print.	Abstract of applications for specifications C. S., 6517 of 1896.
167 to 173	31	.....	23	10832-35 to 10832-36	Blue Print.	List of Disbursing Checks issued to Contractors per Carter's stub-book entries and entries on vouchers, and list of vouchers, 1892 to 1897.
174	31	.....	23	10836-37-41	Blue Print.	Table of quantities of Mattresses stated for canvassing bids, compared with quantities actually used under Contracts 4960, 4820, 5811, 6515 and 6517.
175	31	.....	23	10837-38-41	Blue Print.	Material used and cost of work. Contract 4960.
176	31	.....	23	10838-41	Blue Print.	Material used and cost of work, Contract 4820.
177	31	.....	23	10838-41	Blue Print.	Material used and cost of work, Contract 5811.

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179	31	.....	23	10840–41	Blue Print.	Material used and cost of work, Contract 6517.
180	31	.....	23	10842–3	Blue Print.	Table of quantities of stone stated for canvassing bids compared with quantities actually used under Contracts 4960, 4820, 5811, 6515 and 6517.
181	31	.....	23	10843–4	Blue Print.	Abstract of proposals, Contract 4820 C. S.
182	31	.....	23	10843–4	Blue Print.	Abstract of proposals, Contract 4960 S. H.
183	31	.....	23	10843–4	Blue Print.	Abstract of proposals, Contract 5811 C. S.
184	31	.....	23	10843–4	Blue Print.	Abstract of proposals, Contract 6517 C. S.
185	31	.....	23	10843–4	Blue Print.	Abstract of proposals, Contract 6515 S. H.
186	31	.....	23	10849–70	Blue Print	Drawing of log and brush Mattress, Gilmore design, 1884, Contr. 2744.
187	31	.....	23	10849–70	Blue Print.	Drawing of Facine Mat, Gilmore design, 1884, Sup. Contr. Dec. 22, 1886.
188	31	.....	23	10849–70	Blue Print.	Drawing of Fascine Mat. Carter design, 1890, Contract 4224.
189	31	.....	23	10850–70	Blue Print.	Drawing of Pole and Brush Mat., 2nd design, Contr. 3890, Carter, 1889.
190	31	.....	23	10850–70	Blue Print.	Drawing of Fascine Mat., Carter's design, 1891, Contr. 4572, same as 2nd design in Contracts 4820, 4960, 6515, 6517.
191	31	.....	23	10850–70	Blue Print.	Drawing of Fascine Mat., Carter's 3rd design in Contracts 4820, 4960, 6515, 6517.
192	31	.....	23	10850–70	Blue Print.	Drawing of Log & Brush Mattress, Carter's 1st design in Contracts 4820, 4960, 6515, 6517.
193	31	.....	23	10869–70	Blue Print.	Table cost of Fascine or brush Mattresses under various contracts, 1884 to 1897.
194	...	Sent up	23	10873–86	Photo.....	July 29, 1897, of 8 course multiple Mat. at C. S.
195	....	Sent up	23	10873–86	Photo.....	July 29, 1897, of 8 course multiple Mat. at C. S.
196	23	10927	23	10926	Printed...	Letter, A. S. Cooper to Carter, Mar. 10, 1897, as to Tybee Breakwater.
197	31	.....	23	10953–4	Blue Print.	List of disbursing checks issued to Jetty Contractors by Carter on Mer. N. Bk., Sav., 1892 to 1897, on which 1st endorsement is at New York.

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198	31	.....	23	10954	Blue Print.	List of disbursing checks issued to Jetty Contractors by Carter on Mer. N. Bk., Sav., 1892 to 1897, on which the first endorsement is at Savannah.
199	31	.....	23	10956–7	Blue Print.	List of certain checks paid by Sav. Bk. & Trust Co. Savh., Ga., for acct. J. F. Gaynor.
200	31	.....	23	10960–1–7	Blue Print.	List of debits to acct, W. T. Gaynor with 1st Nat. Bk., Fernandina, Fla., Nov. 24, '96, to May 7, '98.
201	31	.....	23	10961–2–7.	Blue Print.	List of credits to acct. W. T. Gaynor with 1st Nat. Bk., Fernandina Fla., Nov. 24, '96, to May 7, '98.
202	31	.....	23	10962–3–7	Blue Print.	List of exchanges received by 1st Nat. Bk., Fernandina, Fla., deposited in acct. W. T. Gaynor, Nov. 23, '96, to Nov. 1, '97.
203	31	.....	23	10970	Blue Print.	Recapitulation of debits in acct. W. T. Gaynor with 1st Nat. Bk. of Fernandina, Nov. 24, 1896, to June 30, 1897.
204	31	.....	23	10970	Blue Print.	Recapitulation of debits in acct. W. T. Gaynor with 1st Nat. Bk. of Fernandina, July 1, 1897, to May 7, 1898.
205	31	.....	23	10971–72–83	Blue Print.	List of all checks in acct. of E. H. Gaynor, Treas. with So. Bk., State Ga., Oct. 10, 1896 to June 30, 1897.
206	31	.....	23	10972–76–83	Blue Print.	List of all credits in acct. of E. H. Gaynor, Treas. with So. Bk., State Ga., Oct. 10, 1896, to June 30, 1897.
207	31	.....	23	10976–83	Blue Print.	List of checks charged W. T. Gaynor in acct. with So. Bk., State Ga., Oct. 22, 1896, to May 3,1897.
208	31	.....	23	10977–78–83	Blue Print.	List of credits in acct. of W. T. Gaynor with So. Bk., State Ga., Oct. 22, 1896, to May 3, 1897.
209	31	.....	23	10978–83	Blue Print.	Recapitulation of all debits in acct. E. H. Gaynor, Treas. and W. T. Gaynor with So. Bk., St. Ga., Oct. 10, 1896, to June 30, 1897.
210	31	.....	23	10979–83	Blue Print.	List of all checks charged to acct. of E. H. Gaynor, Treas. with the So. Bk., State Ga., July 1, 1897, to Feb. 18, 1898.
211	31	.....	23	10979–83	Blue Print.	Recapitulation of all debits in acct. E. H. Gaynor, Treas. with So. Bk. State Ga., July 1, 1897 to Feb. 17, 1898.

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212	31	.....	23	10980-81-83	Blue Print.	List of all credits in acct. of E. H. Gaynor, Treas. with So. Bk., State of Ga., July 1, 1897 to Feb. 18, 1898.
213	31	.....	23	10981-82-83	Blue Print.	Entries on books of So. Bk., State Ga., of certain checks on N. Y. banks deposited to credit of E. H. Gaynor, Treas., Aug. 25, 1893, to Sept. 15, 1894.
214	31	.....	23	10982-83	Blue Print.	Entries on books of So. Bk., State Ga., of certain cks. on New York banks deposited to credit of W. T. Gaynor, April 2, 1894, to Sept. 1, 1894.
215	31	.....	23	10982-83	Blue Print.	Entries on books of So. Bk., St. Ga., of certain checks on N. Y. banks, deposited to credit of E. H. Gaynor.
216	31	.....	23	11017-8-9	Blue Print.	List of vouchers for payment on contracts, 1889 to 1897.
217	31	.....	23	11017-19	Blue Print.	Abstract showing amounts claimed by contractors for work done and amts. paid on contracts, Jan. 16, 1889, to Oct. 8, 1896.
218	26	13144-69	23	11019	Printed...	Certified copy court of claims suits.
219	23	11020	23	11019-20	Printed...	Letter of Carter to Sec. State W. Va., Aug. 11, 1892, for copy of charter of Atlantic C. Co.
220	23	11021	23	11021	Printed...	Bill for copy of charter.
221	23	11022	23	11022-27	Printed...	Form of advertisement, S. H., July 18, 1892.
222	23	11024	23	11023-27	Printed...	Telegram, H. M. Adams to Carter, Aug. 18, 1892, to readvertise.
223	23	11025	23	11025-27	Printed...	Telegram, H. M. Adams to Carter, Aug. 18, 1892, as to 8 hour law., etc.
224	23	11028	23	11027-8	Printed...	Certified copy charter of the Atlantic C. Co.
225	31	.....	23	11032-4	Blue Print.	List of disbursing checks issued to Jetty contractors by O. M. Carter drawn on asst. treas., N. Y., on which first bank endorsement is at New York, 1892 to 1897.
226	31	.....	23	11032-3-4	Blue Print.	List of disbursing checks issued to Jetty contractors by O. M. Carter, drawn on asst. treas., N. Y., on which the first bank endorsement is at Savannah, Ga., Fernandina, Fla., and Brunswick, Ga.

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227	31	.....	23	11033–4	Blue Print.	List of certain disbursing check issued to Jetty contractors by C. M. Carter, drawn on asst. treas. N. Y., 1892 to 1897, and certain disbursing checks issued by G. W. Goethals, 1895.
228	31	.....	23	11041–2	Blue Print.	Acct. O. M. Carter with C. H. Van Deventer, broker.
229	....	Sent up	23	11040–1–2	Original...	Check, Feb. 11. 1893, Carter to Van Deventer, $5,150.
230	....	Sent up	23	11040–1–2	Original...	Check March 15, 1893, Carter to VanDeventer, $5,000.
231	....	Sent up	23	11040–1–2	Original...	Check, Apr. 14, 1893, Westcott to Deventer, $14,742.64.
232	31	.....	23	11040–1–2	Blue Print.	Extracts from Acct. books of C. H. Van Deventer showing certain entries in name of R. F. Westcott.
233	31	.....	23	11045–8	Blue Print.	Acct. O. M. Carter with Watson & Gibson.
234	....	Sent up	23	11047–8	Original...	Check Feb. 11, 1893, Carter to Watson & Gibson, $5,493.75.
235	31	.....	23	11051–2–7	Blue Print.	Entries on books of Knickerbocker T. Co., N. Y., of certain debits to acct. B. D. Greene.
235A	....	Sent up	23	11052–57	Original...	Ck. June 23, 1897 of Greene, $5,000.
235C	....	Sent up	23	11052–57	Original...	Ck. July 6, 1897, of Greene, $749.90.
235D	....	Sent up	23	11052–57	Original...	Ck. July 6, 1897 of Greene, $30,000.
235E	....	Sent up	23	11052–57	Original...	Ck. July 6,1897 of Greene, $2,408.39.
235F	....	Sent up	23	11052–57	Original...	Ck. July 6, 1897 of Greene, $100,000
235G	....	Sent up	23	11052–57	Original...	Ck. July 6, 1897 of Greene $100,000.
235B	....	Sent up	23	11052–57	Original...	Chg. ticket July 7, 1897, Greene with K. T. Co.
236	31	.....	23	11053–4–7	Blue Print.	Entries on books of Knickerbocker T. Co., N. Y., of certain credits in acct. of B. D. Greene.
236A	....	Sent up	23	11054–5–7	Original...	Credit slip, Greene with K. T. Co.
236B	....	Sent up	23	11054–5–7	Original...	Credit slip, Greene with K. T. Co., $22,700.
236D	....	Sent up	23	11054–5–7	Original...	Deposit ticket, Greene with K. T. Co., $575,749.90.
236C	....	Sent up	23	11054–5–7	Original...	Deposit ticket, Greene with K. T. Co., $31,159.50.
236E	....	Sent up	23	11054–5–7	Original...	Deposit ticket, Greene with K. T. Co., $5,000.
236F	....	Sent up	23	11054–5–7	Original...	Deposit ticket, Greene with K. T. Co., $5,000.
236G	....	Sent up	23	11054–5–7	Original...	Deposit ticket, Greene with K. T. Co., $200.
236H	....	Sent up	23	11054–5–7	Original...	Deposit ticket, Greene with K. T. Co., $910.

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236L	....	Sent up	23	11054–5–7	Original...	Ck., Westcott to Greene, June 8, 1897, $5,000.
236M	....	Sent up	23	11054–5–7	Original...	Ck., Westcott to Greene, May 12, 1897, $5,000.
236N	....	Sent up	23	11054–5–7	Original...	Ck., Carter endorsed deposit, Greene Feb. 8, 1896.
236O	....	Sent up	23	11054–5–7	Original...	Ck., R. F. W., O. M. Carter, atty., to Greene, Dec. 7, 1895.
237	25	12716	23	11055–6–7	Printed...	Letter, Secy. K. T. Co., July 7, 1897, as to purchase $150,000 U. S. bonds.
236I	....	Sent up	23	11054–5–7	Original...	Disbursing Ck., Carter, July 6, 1897, $345,000.
236J	....	Sent up	23	11054–5–7	Original...	Disbursing Ck., Carter, July 6. 1897, $230,749.90.
236K	....	Sent up	23	1104–5–7	Original...	Disbursing Ck., Gillette, Aug. 3, 1897, $31,159.50.
238	31	.....	....	11059–62–67	Blue Print.	Extract from books of Reed & Flagg showing certain transactions in name of O. M. Carter.
238B	....	Sent up	23	11061–2–7	Original...	Ck., R. F. W., O. M. Carter, atty., Oct. 4, 1895, favor Reed & Flagg, $10,000.
238C	....	Sent up	23	11061–2–7	Original...	Ck., R. F. W., O. M. Carter, atty., Oct. 9, 1895, endorsed to Reed & Flagg, $1,283.67.
238D	....	Sent up	23	10061–2–7	Original...	Deposit Ticket, Reed & Flagg, Oct. 9, 1895.
238E	....	Sent up	23	11061–2–7	Original...	Deposit Ticket, Reed & Flagg, Oct. 10, 1895.
239	31	.....	23	11062–4–7	Blue Print.	Extract from books of Reed & Flagg showing certain transactions in name of R. F. Westcott.
239A to 239L	...	Sent up	23	11063–4–7	Originals..	Cks. of R. F. Westcott and R. F. Westcott, O. M. Carter, atty., favor Reed & Flagg.
239M to 239[illegible]	...	Sent up	23	11063–4–7	Originals..	Deposit Tickets, Reed & Flagg with Bank of America.
23900 to 23900	...	Sent up	23	11064–6–7	Original...	Cks of Reed and Flagg.
240	31	.....	23	11069–71–80	Blue Print.	Entries on books of Amer. Ex. N. Bk., N. Y., of certain credits to acct. of B. D. Greene.
241	31	.....	23	11072–80	Blue Print.	Entries on books of Amer. Ex. N. Bk., N. Y., of certain credits to acct. of B. D. Greene.
242	31	.....	23	11072–80	Blue Print.	Certain checks of B. D. Greene paid by the Amer. Ex. N. Bk., N. Y., as shown by books.

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243	31	.....	23	11072-3-80	Blue Print.	Entries on books of Amer. Ex. N. Bk., N. Y., of certain credits to account of John F. Gaynor.
244	31	.....	23	11073-4-80	Blue Print.	Entries on books of Amer. Ex. N. Bk., N. Y., of certain credits to account of John F. Gaynor.
245	31	.....	23	11075-80	Blue Print.	Certain checks of John F. Gaynor paid by Amer. Ex. N. Bk., N. Y., as shown by books.
246	31	.....	23	11074-5-80	Blue Print.	Entries on books of Amer. Ex. N. Bk., N. Y., of certain credits to account W. T. Gaynor.
247	31	.....	23	11075-80	Blue Print.	Entries on books of Amer. Ex. N. Bk., N. Y., of certain credits to account W. T. Gaynor.
248	31	.....	23	11075-6-80	Blue Print.	Certain checks of W. T. Gaynor paid by Am. Ex. N. Bk., N. Y., as shown by books.
249	31	.....	23	11076-8-80	Blue Print.	List of certain disbursing checks of O. M. Carter which bear the stamp of Am. Ex. N. Bk., N. Y., or endorsements of its officers, but which in their entirety were not credited to any individual account, with entries from books showing disposition.
249A	....	Sent up	23	11077-8-80	Credit Tkt.	Set out in acct. Exh. 249.
249B	....	Sent up	23	11077-8-83	Credit Tkt.	Set out in acct. Exh. 249.
250	....	Sent up	23	11078-9	Original...	Ck., April 17, 1894, Carter to Greene $194.65.
250A	....	Sent up	23	11078-9	Original...	Ck., Dec. 21, 1893, Carter to Greene, $200.
250B	....	Sent up	23	11078-9	Original...	Ck., June 5, 1894, Carter to Greene, $500.
250C	....	Sent up	23	11078-9	Original...	Ck., Nov. 27, 1896, Westcott to Greene, $19,000.
250D	....	Sent up	23	11078-9	Original...	Ck., Feb. 9, 1897, Westcott to Greene, $10,000.
250E	....	Sent up	23	11078-9	Original...	Ck., April 19, 1897, Westcott to Greene, $10,000.
250F	....	Sent up	23	11078-9	Original...	Ck., Dec. 9, 1896, Carter to Greene, $1,000.
251	31	.....	23	11088-9-95	Blue Print.	Entries on books of Union T. Co., N. Y., showing certain credits in acct. O. M. Carter.
252	31	.....	23	11089-90-95	Blue Print.	Entries on books of Union T. Co., N. Y., showing certain debits in acct. O. M. Carter.
253	31	.....	23	11091-95	Blue Print.	Entries on books of Union T. Co., N. Y., showing all credits in acct. kept in name of R. F. Westcott, Feb. 7, 1895 to May 11, 1896.

Plf. Exh. No.	Where Copied		Where Identified and offered		How Appearing	Nature of Document
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254	31	.....	23	11092–5	Blue Print.	List of all checks paid by Union T. Co., N. Y., drawn on acct. kept in name of R. F. Westcott, Feb. 7, 1895 to May 11, 1896.
255	31	.....	23	11093–4–5	Blue Print.	List of certain checks paid by Union T. Co., N. Y., drawn on acct. kept in name of R. F. Westcott.
256	31	.....	23	11094–5	Blue Print.	Entries on the books of the Union T. Co., N. Y., showing certain credits in acct. kept in name of R. F. Westcott.
257	....	Sent up	....	11128–9–67	Original...	Photo at Augusta, Ct. M. Ex. 56.
258	....	Sent up	....	11129–67	Original...	Photo at Augusta, Ct. M. Ex. 57.
259	....	Sent up	....	11129–30–67	Original...	Photo at Augusta, Ct. M. Ex. 58.
260	....	Sent up	....	11130–1–67	Original...	Photo at Augusta, Ct. M. Ex. 63.
261	....	Sent up	....	11131–67	Original...	Photo at Augusta, Ct. M. Ex. 61.
262	....	Sent up	....	11131–67	Original...	Photo at Augusta, Ct. M. Ex. 59.
263	23	11166	23	11166	Printed...	Carter's instructions to E. R. Conant, Augusta work, Aug. 2, 1893.
264	23	1168	23	11167–8	Printed...	Letter Nov. 19, 1892, Carter to Cf. Engrs. to extend time on Walsh contract.
265	23	11227	23	11226	Printed...	Minutes of Atlantic C. Co., Aug. 5, 1892, as to purchase of plant for $26,932.50.
266	23	11240	23	11239–40	Printed...	Telegram Carter to Connolly, Aug. 15, 1896, as to advertisements.
267	23	12241	23	11240	Printed...	Telegram Carter to Connolly as to advertisements.
268	23	11241	23	11236–40	Printed...	Form of advertisement for S. H. contract of 1896 enclosed in letter of Carter to Cf. Engrs. of June 4, 1896, R. page 11198.
284	24	11340	24	11339–40	Printed...	Memo. of F. M. Smith, clerk War Department, of delivery June 14, 1899, to department of justice of box of papers.
285	31	.....	24	11345–6	Blue Print.	List of certain disbursing checks issued by O. M. Carter to Contractors, drawn on Ass't Treas., N. Y.
286	24	11348	24	11347–8–57	Printed...	Letter, Carter to Gen. Wilson, Cf. Engrs., March 17, 1897, enclosing Sup. contract for dredging C. S.
287	24	11350	24	11349–50–56	Printed...	Sup. Contract March 17, 1897, for dredging C. S. recommended by O. M. Carter to Cf. Engrs.
288	24	11355	24	11352–4–56	Printed...	Assent of Sureties to above.
289	24	11357	24	11356–7	Printed...	Letter, Carter to J. F. Gaynor, March 17, 1897.
290	24	11358	24	11357–8	Printed...	Letter, W. P. Craighill to Carter, Feb. 9, 1892.

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291	24	11360	24	11359	Printed...	Vouchers paid contractors C. Contr. 6517.
292	24	11373	24	11359	Printed...	Vouchers paid contractors S. Contr. 6515.
293	24	11393	24	11390–2	Printed...	Letter, May 11, 1889, D. V. Ho to Carter.
324	24	11434–5	24	11433–4–5	Printed...	Sec. 506 Army Regulations. " 519 " " " 520 " "
325	24	11435	24	11433–4–5	Printed...	Sec. 46, Regulations Cf. Engrs.
328	24	12326	24	12323–5–6	Printed...	Letter Carter to Rees, Sept. 1891, in relation to Augusta w
331	31	.....	18 25	8642 12447–8	Blue Print.	Drawing of a two course multi mat. And see Vol. 25, P. 130
332	31	.....	18 25	8641 12465	Blue Print.	Drawing of Charleston mat.
333	31	.....	25	12785 12763	Blue Print.	Depth of Navigable channel principal shoals, Sav. river.
334	27	.....	25	12785	Blue Print.	Drawing Galveston Mattress as Dft. Exh. 48 Court Martial.
339	25	12911	25	12910–11–13	Printed...	Letter, Carter to Reed & Fl Oct. 4, 1895.
340	25	12913	25	12912–13	Printed...	Letter, Reed & Flagg to Car Feb. 27, 1896.
341	21	9675	25	13107–13	Printed...	Proposal W. H. Walsh for Co 4820.
342	24	12039	24	12036–8–48	Printed...	Stock certificate Oct. 9, 1895, Del. & Hud. Canal Co., 100 sh in name of O. M. Carter.
343	24	12040	24	12036–8–48	Printed...	Stock certificate Oct. 9, 1895, Del. & Hud. Canal Co., 100 sh in name of O. M. Carter.
344	24	12045	24	12044–5–8	Printed...	Acct. L. L. Kellogg with Ken & Whillock.
345	24	12047	24	12046–7–8	Printed...	Check Kendall & W. to Kell Nov. 23, 1897.
346	24	12057	24	12053–7–81	Printed...	Ck. Del. Lack. & W. R. R. June 29, 1900, to Robt. L rence.
347	24	12058	24	12057–8–81	Printed...	Ck. Del. Lack. & W. R. R. Co. 20, 1900, to Robt. Lawrence.
348	24	12060	24	12060	Printed...	Deposit ticket Kellogg, June 1900 with N. Y. Sec. & T. Co.
349	24	12061	24	12061	Printed...	Deposit ticket Kellogg, July 2, 1 with N. Y. Sec. & T. Co.
350	24	12067	24	12065–7–83	Printed...	Ck. J. P. Morgan & Co., to R Lawrence, Oct. 1, 1900.
351	24	12069	24	12068–9–72	Printed...	Coupon envelope Robt. Lawre M. L. S. & W., Nov. 14, 1900.
352	24	12070	24	12070–2	Printed...	Ck., Chi. & N. W. R. Co., Nov. 1900, to Robt. Lawrence.
353	24	12074	24	12073–5	Printed...	Deposit ticket Kellogg & Rose A. Ex. Nat. Bk., Oct. 2, 1900.

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354	24	12074	24	12073–5	Printed . . .	Deposit ticket Kellogg & Rose with A. Ex. Nat. Bk., Nov. 15, 1900.
354A	24	12077	24	12076–7–81	Printed . . .	Coupon envelope Robt. Lawrence, Del. Lack. & W., July 2, 1900.
356	31	. . . . .	24	12084–5–6	Blue Print.	Tri-monthly reports 1896 Contr. S. H. embraced in Exh. 368, Shields.
to 362	31	. . . . .	24	12084–5–6		
363	31	. . . . .	24	12086–7	Blue Print.	Tri-monthly reports 1896 Contr. C. S. embraced in Exh. 368 Shields.
364	31	. . . . .	24	12086–7	Blue Print.	
366	31	. . . . .	24	12086–7	Blue Print.	
367	31	. . . . .	24	12086–7	Blue Print.	
365	31	. . . . .	24	12087	Blue Print.	Profile of portion N. Jetty C S. showing placing of Mats. on top of each other. Part of Exh. 369, Sheet 4.
368	11	5321	11	3152	Printed . . .	Table of dimensions of Mats. put in Jetties Contr. 6515, S. H. 1896.
....	31	. . . . .	24	12087	Blue Print.	
369	11	5326	11	5152	Printed . . .	Table of dimensions of Mats. put in Jetties Contr. 6517, C. S., 1896.
....	31	. . . . .	24	12087	Blue Print.	
370	31	. . . . .	11	5152–3	Blue Print.	Table of dimensions of Mats. put in Jetties Contr. 4960, S. H. 1892. Same as Defts. Exh. U. 5 to I7 (Shields), and Exh. 370, Wyman.

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A	23	10739	23	10738	Printed...	Letter Carter to Board, Sep. 2 1897, relative to papers in F case, same as Dft. Exh. Wyman.
.....	14	6583	....	.....	Printed...	Letter, Carter to Board, Sept. 2 1897, relative to papers in F case same as Dft. Exh. Wyman.
B	22	10299	11	11149	Printed...	Sup. Contr. 5359, A. J. Twig Nov. 6, 1893.
C	23	11176	23	11175–6	Printed...	Letter, Carter to Cf. Engs., D 24, 1888, inclosing abstract proposals.
C-1	23	11179	23	11178–9	Printed...	Same, from letter press book.
C-2	23	11180	23	11178–9	Printed...	Abstract of proposals Con 3890.
D	23	11185	23	11182–4	Printed...	Letter, Carter to Cf. Clerk, W Dept., Sept. 22, 1890, in form of advertisement.
D-1	....	Sent up	23	11182–6	Original...	Form of specifications incl. letter, Sept 22, 1890.
D-2	23	11187	23	11182–6	Printed...	Form of adv. incl. in letter, Se 22, 1890.
D-3	23	11189	23	11188	Printed...	Letter, Carter to Cf. Engs., O 20, 1890, incl., abstract proposals.
D-4	23	11189	23	11188	Printed...	Abstract of proposals contr. 42
E	23	11192	23	11192	Printed...	Letter, Carter to Cf. Clerk W Dept., Aug. 17, 1892, in form of adv.
E-1	23	11194	23	11192	Printed...	Form of adv. inclosed in abo
G	23	11198–205	23	11196–7	Printed...	Letter, Carter to Cf. Clerk W Dept., June 4, 1896, in form of adv. S. H.
G-1	....	Sent up	23	11205–6	Original...	Specifications incl. in above.
H	26	13169	23	11208	Printed...	Report of operations, S. H., D 1896.
I	26	13172	23	11210–11	Printed...	Report of operations, S. H., J 1897.
J	26	13175	23	11211	Printed...	Report of operations, S. H., F 1897.
O	26	13177	23	11212	Printed...	Report of operations, S. March, 1897.
N	26	13180	23	11214	Printed...	Report of operations, S. April, 1897.
Z	26	13183	23	11214	Printed...	Report of operations, S. H., 1897.
FF	26	13185	23	11214	Printed...	Report of operations, S. June, 1897.
H-1	31	....	23	11209	Blue Print.	Calculations of Giesler, S. Dec., 1896.
K	31	....	23	11211	Blue Print.	Calculations of Giesler, S. Feb., 1897.

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P	31	.....	23	11212	Blue Print.	Calculations of Giesler, S. H., March, 1897.
V	31	.....	23	11214	Blue Print.	Calculations of Giesler, S. H., April, 1897.
A.A.	31	.....	23	11214	Blue Print.	Calculations of Giesler, S. H., May, 1897.
G.G.	31	.....	23	11214	Blue Print.	Calculations of Giesler, S. H., June, 1897.
P.P.	31	.....	23	11224	Blue Print.	Calculations of Giesler, S. H., Dec., 1896.
V.V.	31	.....	23	11224	Blue Print.	Calculations of Giesler, C. S., Jan., 1897.
A.A.A.	31	.....	23	11224	Blue Print.	Calculations of Giesler, C. S., Feb., 1897.
I.I.I.	31	.....	23	11224	Blue Print.	Calculations of Giesler, C. S., March, 1897.
K.K.K.	31	.....	23	11224	Blue Print.	Calculations of Giesler, C. S., April, 1897.
R.R.R.	31	.....	23	11224	Blue Print.	Calculations of Giesler, C. S., May, 1897.
V.V.V.	31	.....	23	11224	Blue Print.	Calculations of Giesler, C. S., June, 1897.
H-2	11	5321	23	11209	Printed...	
to H-12	11	5321	23	11209	Blue Print.	
L	11	5321	23	11211	Blue Print.	
M	11	5321	23	11212	Blue Print.	
N	11	5321	23	11212	Blue Print.	
Q	11	5321	23	11213	Blue Print.	
R	11	5321	23	11213	Blue Print.	
S	11	5321	23	11213	Blue Print.	Tri-monthly reports contr. 6515, S. H., 1896, embraced in Exh. 368, in Vol. 31; also printed in Vol. 11, p. 5321. Special report on Mat 45, March 12, 1897 copied Vol. 3, p. 1224.
T	11	5321	23	11214	Blue Print.	
W	11	5321	23	11214	Blue Print.	
X	11	5321	23	11214	Blue Print.	
Y	11	5321	23	11214	Blue Print.	
B.B.	11	5321	23	11214	Blue Print.	
C. C.	11	5321	23	11214	Blue Print.	
D.D.	11	5321	23	11214	Blue Print.	
H.H.	11	5321	23	11214	Blue Print.	
I.I.	11	5321	23	11214	Blue Print.	
J.J.	11	5321	23	11214	Blue Print.	
K.K. L.L.	26	13188	23	11222-3	.....	Project, C. S., June 12, 1895, submitted to Carter same as Ct. M. Exh. 99.
N.N.	26	13194	23	11222-3	.....	Project, C. S., Dec. 18, 1895, of Board, same as Ct. M. Exh. 98.
O.O.	26	13205	23	11224	Printed...	Report of operations, C. S., Dec., 1896.
T.T.	26	13208	23	11224	Printed...	Report of operations, C. S., Jan., 1897.
Y.Y.	26	13210	23	11224	Printed...	Report of operations, C. S., Feb., 1897.

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D.D.D.	26	13213	23	11224	Printed...	Report of operations, C. S., March, 1897.
J.J.J.	26	13215	23	11224	Printed...	Report of operations, C. S., April, 1897.
P.P.P.	26	13217	23	11224	Printed...	Report of operations, C. S., May, 1897.
U.U.U.	26	13220	23	11224	Printed...	Report of operations, C. S., June, 1897.
Q.Q.	11	5326	23	11224	Printed...	
R.R.	11	5326	23	11224	Printed...	
S.S.	11	5326	23	11224	Printed...	
U.U.	11	5326	23	11224	Printed...	
W.W.	11	5326	23	11224	Printed...	
X.X.	11	5326	23	11224	Printed...	
Z.Z.	11	5326	23	11224	Printed...	
B.B.B.	11	5326	23	11224	Printed...	
C.C.C.	11	5326	23	11224	Printed...	Tri-monthly reports contr. 6517,
F.F.F.	11	5326	23	11224	Printed...	C. S., 1896 embraced in Exh.
G.G.G.	11	5326	23	11224	Printed...	369 in Vo. 31, and also printed
H.H.H.	11	5326	23	11224	Printed...	in Vol. 11, p. 5326.
Q.Q.Q.	11	5326	23	11224	Printed...	
S.S.S.	11	5326	23	11224	Printed...	
T.T.T.	11	5326	23	11224	Printed...	
W.W.W.	11	5326	23	11224	Printed...	
X.X.X.	11	5326	23	11224	Printed...	
Y.Y.Y.	11	5326	23	11224	Printed...	
M.M.M.	11	5326	23	11224	Printed...	
N.N.N.	11	5326	23	11224	Printed...	
O.O.O.	11	5326	23	11224	Printed...	
ZZZ	23	11232	23	11232	Printed...	Project of expenditure S. H., Aug. 30, 1894.
A-4	....	Sent up	24	11435	Original...	Bankers' Magazine.
B-4 to X-4	....	Sent up	24	11540–42 43–44–45 46–47–49 51–53–55– 56–57–58– 60–61–63– 67–68–69– 70–71–86– 89–90–91– 94–97–98	Originals..	Deposit tickets of R. F. Westcott with Union Trust Co. Previously offered and described in Pf. Exh. 256, Shields.
Y-4	24	11640	24	11639–40	Printed...	Letter, May 11, 1897, Greene to Westcott.
Z-4	24	11642	24	11641–42	Printed...	Letter, June 17, 1897, Greene to Westcott.
A-5	24	11645	24	11643–5	Printed...	Letter, Apr. 18, 1897, Greene to Westcott.
B-5	....	Sent up	24	11647–8	Original...	Deposit ticket R. F. Westcott with U. T. Co. Previously offered and described in Pf. Exh. 256, Shields.

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C-5	24	11649–50	24	11647–8	.....	Letter Aug. 9, 1897, Westcott to U. T. Co., enclosing checks $22,183.19. Previously offered in Pff. Exh. 256.
D-5	 24	Sent up 11685	24	11684–5	Original...	Ck. R. F. Westcott to Carter, Oct. 26, 1896, $10,000, endorsed to Beire Gordon, same as Pff. Ex. 281, Shields.
E-5	24	11725	24	11725	Printed...	Letter, Westcott to Carter, Oct. 18, 1897.
F-5	....	Sent up	24	11793–4	.....	Deposit ticket O. M. Carter with U. T. Co., June 8, 1892, $2,500.
G-5	24	11891	....	11890	.....	Letter, Reed & Flagg to Carter, Sept. 14, 1893.
J-5	26	13225	25	12379–80 12814	Printed...	Compilation made by Blandford from annual report of Chf. Engrs. Same as Dft. Exh. 24 Ct. Mar.
U-5 to I-7	31	.....	25 18	13123–5 8843–4	Blue Print. ...	Tri-monthly reports Contr. 4960 S. H., 1892, embraced in Dft. Exh. 150, Wyman, Vol. 29.
EEE	26	13222	23	11224	Printed...	Letter, M. Twiggs to Carter, Apr. 8, 1897.
LLL	26	13223	23	11224	Printed...	Letter, M. Twiggs to Carter, Apr. 25, 1897.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

United States of America
vs.
Oberlin M. Carter *et al.*

Appeal No. 1534 and
Cross-Appeal No. 1535
at Oct. Term 1908.

Appealed May 26, 1909, to the Supreme Court of the United States. Identified as Index to Volume 1 to 33 of Transcript of Record on Appeal.

Dated, Chicago, Illinois, this 12th day of June, A. D. 1909.

EDWARD M. HOLLOWAY,
Clerk U. S. C. C. of Appeals.

(Seal)

VOL. 1

TRANSCRIPT OF RECORD.

Pages 1 to 434a.

(Volume 1 of Record includes pleadings, orders, exceptions to master's report, decrees, appeal, &c., in U. S. Circuit Court, N. Dist. Ill.)

IN THE

Supreme Court of the United States

No.

THE UNITED STATES OF AMERICA,

Appellants,

vs.

OBERLIN M. CARTER, LORENZO D. CARTER, I. STANTON CARTER, HORACE G. STONE, NATHANIEL C. SEARS, THE INTERNATIONAL AUDIT COMPANY, ROBERT NELSON, AND LYMAN E. COOLEY,

Appellees.

Appeal from the Circuit Court of Appeals of the United States for the Seventh Circuit.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT.

OCTOBER TERM, A. D. 1908.

No.

THE UNITED STATES OF AMERICA,
Appellants,

vs.

OBERLIN M. CARTER, LORENZO D. CARTER, I. STANTON CARTER, HORACE G. STONE, NATHANIEL C. SEARS, THE INTERNATIONAL AUDIT COMPANY, ROBERT NELSON, AND LYMAN E. COOLEY,
Appellees.

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Special Asst. Atty. Gen'l.,
MR. EDWIN W. SIMS,
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Solicitors for Appellants.

MR. HORACE G. STONE,
Solicitor for Appellees.

MR. N. C. SEARS,
Pro se.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

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Pleas in the Circuit Court of the United States for the Northern District of Illinois—Eastern Division, in chancery sitting at the United States Court Room, in the City of Chicago in said District and Division before the Honorable Christian C. Kohlsaat, Circuit Judge, for said 7th Judicial Circuit at the regular December 1907 term of said Court towit: On March 21st, 1908, and April 14th, 1908, being two of the days of the said term of said Court.

H. S. STODDARD,
Clerk.

IN THE

Circuit Court of the United States.

NORTHERN DISTRICT OF ILLINOIS.

EASTERN DIVISION.

THE UNITED STATES OF AMERICA vs. OBERLIN M. CARTER et al.	No. 25,980.

Be it remembered that on the 27th day of August, 1901, came the complainants in the above entitled Cause, by their Solicitors, Marion Erwin, Special Assistant to the Attorney General, and S. H. Bethea, United States Attorney as counsel, and filed in the Clerk's Office of the said Circuit Court of United States for the Northern District of Illinois, Northern Division, a certain bill of complaint, for injunction, receiver and relief, in words in figures following to wit—

BILL.

To the Honorable, the Judges of the Circuit Court of the United States for Northern District of Illinois.

The United States of America brings this its bill of complaint against Oberlin M. Carter, a citizen of the State of Ohio at present residing in the United States Penitentiary at Fort Leavenworth in the State of Kansas, and against Lorenzo D. Carter, a citizen of the State of Illinois residing at Oakland, Coles County, Illinois, and I. Stanton Carter, a citizen of the State of Illinois, residing at Chicago, Illinois, and against N. W. Harris & Company, a partnership composed of N. W. Harris, a resident of the City of Chicago, Illinois, and others.

I.

Carter's Duties, Powers and Discretions.

And thereupon your orators charge, aver,, complain and say that from about the year 1888 until the 20th day of July, 1897, continuously, the said Oberlin M. Carter was an officer of the United States Army in the Corps of Engineers, and as such engineer in local charge in the Southern Judicial District of Georgia, of what is usually called the "Savannah District" for the improvement by the United States of rivers and harbors, and as such officer he was engaged in and about the execution of such river and harbor improvements as were made in said Savannah District during said period; and as such officer in charge of said Savannah District he was vested with sundry powers, duties and discretions during said period and amongst others:

With power, duty and discretion in proposing from time to time to his superiors for adoption, projects for the improvement of the Rivers and Harbors in said Savannah District.

With power, duty and discretion in proposing from time to time to his Superiors for adoption, projects for the expenditure of moneys appropriated by Congress for the improvement of the Rivers and Harbors in said Savannah District.

With power, duty and discretion in devising, drafting and proposing from time to time to his Superiors for adoption, specifications for contracts for such River and Harbor improvements proposed to be made in said Savannah District.

With power, duty and discretion in from time to time drafting and proposing to his superiors for adoption, forms of advertisements for giving notice to the public that competitive bids would be received by him for the construction of such proposed River and Harbor works.

With power, duty and discretion in causing to be fixed and fixing the time such advertisements would be published prior to the opening of bids.

With power, duty and discretion in proposing from time to time to his superiors for adoption, and causing to be fixed, and fixing for such contracts to be let, the time designated in the specifications within which the successful bidder would be required to commence work.

With power, duty and discretion in giving out information in regard to such contracts to be let.

With power, duty and discretion in from time to time receiving proposals for and recommending to his superiors the awarding of such contracts.

With power, duty and discretion in approving or rejecting the bonds required to be given by such contractors.

With power, duty and discretion in superintending the work being done by contractors under such contracts in said Savannah District; and in approving and accepting or rejecting material being put in and work done by such contractors in said Savannah District, according as the same was in accordance with the requirements of such contracts or not.

With power, duty and discretion in from time to time approving modifications of such contracts and suggesting to his superiors the adoption of such modifications.

With power, duty and discretion in from time to time approving or rejecting the accounts rendered to him by such contractors for material furnished and work done or claimed by such contractors to have been furnished or done by them under contracts let, according as such accounts should be fair and honest or false and fraudulent.

And with power, duty and discretion when in funds intrusted to him as a disbursing officer, in from time to time paying such contractors or refusing to pay them, the amounts claimed by them to be due them for material furnished and work done under such contracts let, according as such claims were fair and honest or false and fraudulent.

II.

The Scheme Devised to Defraud.

That on or about the year 1891, the said Oberlin M. Carter and one Benjamin D. Greene, one John F. Gaynor, one William T. Gaynor, one Edward H. Gaynor and one Michael A. Connolly (hereinafter for the sake of brevity called the conspirators), devised, concocted and put in operation a certain fraudulent scheme for the purpose of defrauding your orators, the United States of America.

(1) That the said fraudulent scheme contemplated that the said Oberlin M. Carter as such engineer officer in charge of said Savannah district should fraudulently exercise the said

powers of his office and discretion vested in him as aforesaid in favor of said conspirators and against the interest of the United States, and contrary to the duty and allegiance due by him to the Government under which he held such high and important trust.

(2) That said fraudulent scheme contemplated that by undue shortness of time in advertising the letting of contracts; that by withholding specifications from proposed bidders not in the conspiracy, as far as such withholding could be made consistent with the concealment of the fraud; that by drafting the specifications, so as to mislead proposed bidders not in the conspiracy as to the character and quantity of material really intended to be used in the work under the contracts, and by fraudulently and secretly furnishing to his co-conspirators information as to the bids, and as to his future course as engineer officer in charge in the construction of the work under the contracts, the said Oberlin M. Carter would effectually suppress competition in the bidding for such contracts to be let for the United States through said Oberlin M. Carter, for said Savannah District, and that the said conspirators in the name of some one of them, or of some other person or corporation for their benefit, would be the only real bidders for such contract work for construction of jetties, spur-dams and training walls, for the improvement of the rivers and harbors in said Savannah District. That thus all such contracts which would be from time to time let for such work as aforesaid would be obtained by some one or other of said conspirators or by and in the name of some other person or corporation but secretly for the benefit of said conspirators; to the end that the said river and harbor work in said Savannah District put out to be done on contracts, would be fraudulently let for the benefit of said conspirators at high and exorbitant cost to the said United States of America, and at great profit to the said conspirators.

(3) That said fraudulent scheme further contemplated, that said Oberlin M. Carter, as such engineer officer in charge as aforesaid should in drafting the specifications for contracts to be let by competitive bids for what is commonly called mattress work to be used in the construction of jetties, spur-dams and training-walls in the river and harbor improvements in said Savannah District, would introduce into the specifications the novel provision of having two or more designs of mattresses specified, to be bid for by the proposed contractor at one price for either design; the one design to be

very much more costly for the contractor to furnish than the other or others, but the engineer in charge to have the option after the contract should be let to call for either design he might choose to have put in the work; with intent that the bid of any person not a party to said fraudulent scheme who should propose to bid on such contract would have to be based upon the most costly design of mattress so specified, as the one most apt to be called for by the engineer, while the said conspirators or the person acting for them, would be informed by the said Oberlin M. Carter before the bidding that only the cheapest design of those specified in the specifications would be called for to be put in the works, and would thus, even if the other means to suppress competition provided for in the fraudulent scheme should fail, be able to bid a very high price for the contract, based on the cheapest design of mattress, and still underbid all other bidders and obtain the contract.

(4) That said fraudulent scheme further contemplated, that said Oberlin M. Carter as such engineer, officer in charge as aforesaid, should in drafting the specifications for contracts to be let for jetties, spur-dams and training walls in said Savannah District would specify so vaguely, and so uncertainly set forth the character, quality, quantity, description and design of the material to be used in the work, (a) that when the material was furnished by the contractor under such contracts as should be so fraudulently obtained for the benefit of said conspirators as aforesaid, the said specifications could and would by a fraudulent, strained and lax construction to be placed upon the same, by said engineer in charge, be made to apparently justify the acceptance and approval which he would make for payment at such high and exorbitant prices, of large quantities of material of very poor and cheap quality, description and design, and of very small value to the United States, and (b) that when if by chance any person not a party to said fraudulent scheme should happen to be the lowest bidder and obtain any such contract in said Savannah District that by a fraudulent, unfair, rigid and stringent construction to be placed upon the specifications by said engineer in charge, the specifications could and would be made to apparently justify the rejection which he would make of material furnished by such contractor of very much better quality, quantity, description and design and of a greater value to the United States, with the intent that by such oppressive rejections, the performance of such contract would be made

ruinous to the contractor so having dared to compete with said conspirators in bidding for such contract, and thus that further competition with the said conspirators would thereafter be effectually cut off.

(5) That said fraudulent scheme further contemplated that on all work so let on contracts which should be obtained for the benefit of said conspirators as aforesaid, the said Oberlin M. Carter, as Engineer in charge as aforesaid, would so instruct and locate the assistant Engineers and Inspectors under him, intended for inspecting the details of the work of construction that there would be little if any inspection of the details necessary to be inspected to ensure the furnishing of honest work and material, and that the said Oberlin M. Carter as such engineer officer in charge would fraudulently accept for the government under such contracts, work done and material furnished known by him to be of inferior quality and quantity and not in accordance with the specifications, to the end that the United States might be defrauded with enhanced profits to the said conspirators.

(6) That said fraudulent scheme further contemplated that the said Oberlin M. Carter as such engineer officer in charge as aforesaid, would fraudulently approve for payment, and when in funds as a disbursing officer, fraudulent pay, accounts which would be rendered to him as such engineer officer in charge as aforesaid, by the said conspirators, or by some one of them, or by or in the name of the person or corporation which should by the successful operation of said fraudulent scheme have obtained such contracts for the secret benefit of said conspirators, and which accounts should be rendered as aforesaid, for such inferior material and work to be put into said works as aforesaid, and at the exorbitant and fraudulent prices stated in such contracts so fraudulently to be obtained by said conspirators as aforesaid.

(7) That said fraudulent scheme further contemplated that the said moneys so fraudulently obtained on such contracts by the said conspirators through the said Oberlin M. Carter, as such Engineer officer in charge, and disbursing officer as aforesaid, should be appropriated to the use of the said conspirators and that they should aid each other in the concealment from the officers of the United States not parties to the conspiracy of the moneys from time to time so misappropriated and of the investments thereof; to the end that said scheme might be further operated by them and that they

might be secure from detection in the enjoyment of such moneys.

(8) That said fraudulent scheme further contemplated that out of the moneys so to be fraudulently appropriated by said conspirators as aforesaid, certain portions the full and exact amount of which is to your orators unknown, should be appropriated by the said William T. Gaynor and Edward H. Gaynor, and smaller sums by the said Michael A. Connolly, and that the net profits of such contracts after payment of said sums and the cost of the work would be divided between the principal conspirators, Benjamin D. Greene, John F. Gaynor and Oberlin M. Carter.

III.

The Scheme to Defraud put in Operation.

That pursuant to the scheme to defraud the United States so devised, concocted and agreed upon between the said conspirators, the said Oberlin M. Carter as such engineer officer in charge of said Savannah District, did on or about the first day of January, 1891, commence to put said fraudulent scheme in operation in said Savannah District, and to exercise the said powers and discretions of his office in favor of the said conspirators and against the United States in accordance with said fraudulent scheme, and continued so to do as successive contracts were to be let and were let from time to time by said Oberlin M. Carter as such engineer officer in charge as aforesaid until on or about July 20th, 1897, when the said Oberlin M. Carter as such engineer officer in charge as aforesaid was relieved from duty and superceded. And each of the conspirators aforesaid, commenced on or about the first day of January, 1891, to do and perform their parts in the accomplishment and carrying out of said fraudulent scheme to defraud the United States and continued so to do as successive contracts were to be let and were let in said Savannah District from time to time, in the suppression of competition in the letting of the contracts, in the obtaining of the contracts in the name of some one of the conspirators or of some other person or corporation, for the benefit of said conspirators at high, exorbitant and fraudulent prices, in putting into the construction under the contracts poor, cheap and inferior material and work not in accordance with the specifications of the

contracts, in the rendering of accounts against the United States for such poor, cheap and inferior material and work not in accordance with the specifications as aforesaid and at said high exorbitant and fraudulent prices fixed in said contracts so fraudulently obtained for the benefit of said conspirators as aforesaid, and in the approval and payment of said accounts by the said Oberlin M. Carter as engineer officer in charge, and in the division of the said moneys so paid between the said conspirators and the concealment thereof, not only until the said Oberlin M. Carter was relieved from duty as such engineer officer in charge of said Savannah District on or about July 20, 1897, as aforesaid, but thereafter continued and have continued until this date to aid and abet each other in the concealment of the moneys so fraudulently obtained from the United States, through the operation of said scheme and in their endeavor to obtain additional moneys from the United States for work alleged to have been done under such contracts so fraudulently obtained at the exorbitant and fraudulent prices secured in said contracts by the operation of said fraudulent scheme, and for the poor, cheap and inferior material put into said constructions, not in accordance with the specifications.

IV.

Description of the Engineering Work.

That the principal expenditures made by the United States in river and harbor improvements in said Savannah District both under General Q. A. Gilmore, the predecessor of the said Oberlin M. Carter in charge of said district and under the administration of the latter were in the construction of spur-dams and training walls, commonly included under the generic term of "jetties" and being a kind of a dam or wall constructed of "logs and brush and stone" or of "brush and stone," so placed as to narrow the channel or so placed in reference to the channel as to effect the flow of the current, and as a result of the increased flow of water to cause an increase in the depth of the channel.

Prior to the formation of the scheme to defraud the United States, formed on about January 1st, 1891, as aforesaid, the brush or logs and brush used in these jetties in the Savannah

District were put into the construction principally in three ways:

Fascines. One of the principal materials used in the construction of jetty work was the brush fascine.

These fascines were usually among other things specified to be made of live brush, well trimmed, the butts of the brush to be placed in alternate directions, and the fascine to be closely choked by ties of wire or tarred rope at intervals of every two or three feet, so as to form an artificial log of the diameter of from 9 to 15 inches at the choke, and from 12 to 20 feet in length, according to the specifications for the particular contract. The form of construction of a fascine being illustrated by Drawing Exhibit A filed herewith.

(1) There were the training-walls and spur-dams built up of fascines, placed in the training-wall or dam by the contractor separately; that is to say, each fascine being put in place one at a time. Prior to the formation of said fraudulent scheme as aforesaid the prevailing contract prices for fascines so put in the works in the District ranged from 89 cents to $1.10 per cubic yard. That is to say, the fascines were piled up on top of each other and measured, and the fascine material contained in a square yard of surface, and of the depth of one yard, cost the Government when placed in the work only from 89 cents to $1.10, according to locality.

(2) The Brush Mattress. In the contracts let prior to the formation of the said scheme to defraud, where the contract provided for the construction of training-walls or spur-dams to be built up of fascines, it was provided that the engineer officer in charge could require the fascines to be placed in the jetty either singly or in mats, and when made into mats and so placed, the mats were paid for by the amount of fascine material composing them, at the contract price of fascines per cubic yard, ranging from 89 cents to $1.10 per cubic yard as aforesaid. These fascine mattresses were usually constructed of a layer of fascines placed side by side, upon a layer of traverse poles spaced at intervals of about 6 feet apart, and upon top of the layer of fascines were placed another layer of poles similarly spaced at intervals, the upper and lower poles being joined by ties of wire or tarred rope, so as to form a flexible mattress.

The form of construction of such a mattress is illustrated by drawing, Exhibit B, filed herewith.

In some of the contracts the fascines rest upon a grillage of poles instead of upon a single layer of poles at the bottom,

and also there was a corresponding grillage of poles on top of the fascines. By a grillage of poles is meant a layer of poles spaced a few feet apart crossed by a second layer of poles similarly spaced. The form of construction of such a mattress is illustrated by Exhibit C, filed herewith.

When a mattress is constructed as shown in drawing, Exhibit B, the fascines are said to be placed between a half grillage of poles at the bottom and a half grillage of poles at the top, as there are only half as many poles used in such a case, as where there is a full grillage of poles at the bottom and at the top as shown in drawing, Exhibit C.

When a mattress was so constructed it was towed to its place, a single mat at a time, and loaded with stone and sunk in its place. The stone used in sinking such mats or in holding down the fascines when put in separately being paid for by the government in addition to the price paid for the fascine material.

The reason that the contractor could afford to put in the fascines in mats as cheaply as when put in separately was that the extra material required in binding poles, was fully compensated for by the less labor and difficulty involved in sinking the larger number of fascines going to make up a mat at one performance.

As a consequence, the Government obtained such fascine mattresses as it used in said Savannah District prior to the formation of the conspiracy at prices ranging from 89 cents to $1.10 per cubic yard. Equivalent for a mattress made of fascines 9 inches, or one-fourth of a yard in diameter, to 22¼ to 27½ cents per square yard of mattress surface, or equivalent for a mattress made of fascines 12 inches in diameter to 29 2/3 to 36 2/3 cents per square yard. Or equivalent for a mattress made of fascines 18 inches in diameter to 44½ to 55 cents per square yard.

(3) The Log Mattress. There was also used in said Savannah District in jetty construction prior to the formation of said scheme to defraud what is commonly called a "log mattress." This is sometimes called, however, a "log and brush mattress" because both logs and brush were used in combination in its construction.

The principal design of this mattress was a raft of logs of the average diameter of 12 inches placed side by side and fastened together with cross-poles placed as binders 8 feet apart and spiked to the logs, and upon this raft was placed a top

layer of live brush, or live brush fascines, from 5 to 6 inches in thickness in the finished work, and secured in place by poles lashed to the binders of the raft, thus making a mattress 18 inches thick, exclusive of the binding poles. The form of construction of such a log mattress is illustrated in Drawing Exhibit D filed herewith.

These log mattresses were always paid for in contracts under General Gilmore and under Carter at a stipulated price by the square yard surface measure, the price averaging about 47 cents per square yard prior to the formation of the conspiracy.

Prior to the formation of said scheme to defraud, whenever specification had been drafted by Gilmore or by Carter in which it was provided that two or more different designs of mattress under the same contract should be bid on by the contractor, it was always provided that separate prices should be bid for furnishing either of the designs the engineer might call for. Or if the contract called for only one price to be bid for two or more designs, it always left it optional with the contractor to furnish that design which he could furnish the most cheaply. So that always the contractor would know precisely the thing upon which he was bidding before the contract was let, and at the time he had to put in his bid in competition with other bidders.

V.

Details of the Fraud Introduced Into and Under the Contracts.

Your orators further aver and charge that early in 1891 the said Oberlin M. Carter, as engineer officer in charge of said Savannah District, commenced to put in operation said fraudulent scheme in respect to the drafting, and by his recommendation causing to be approved by his official superiors, specifications so drawn as to enable said conspirators to consummate said fraud upon the United States.

(1) That in the drafting of the specifications for contract No. 4572 for Cumberland Sound, advertised March 17, 1891, and let May 4, 1891, to John F. Gaynor, the said Oberlin M. Carter, as such engineer officer in charge, for the purpose of carrying into effect said fraudulent scheme introduced into the specifications upon which proposed bidders would be required to base their bids for the contract, three designs of

mattress. Two of these designs were for log mattresses 16 inches thick in the finished work, similar to those provided for in the Gilmore contract of October, 1886, No. 3285, for Cumberland Sound, which allowed the contractor to use the design he preferred, but Carter provided in his speicfications for a third design of brush mattress made of fascines 9 inches in diameter, and required bids for it by the square yard, instead of by the cubic yard as such mattresses had been therefore been paid for, and he provided in the specifications that the engineer in charge should have the option of substituting the "brush mattress" for the log mattress in the construction of the work.

Having succeeded by use of said fraudulent scheme in suppressing competition and awarding said contract to John F. Gaynor at the rate of 99 cents per square yard for log mattresses, being double the price of the same theretofore prevailing, and at the rate of 97 cents per square yard for brush mattresses, being nearly four times the price of such mattresses theretofore prevailing in said Savannah District, the said Carter corruptly exercised his option in favor of said contractor and allowed him to put in all brush mattresses at the exorbitant rate of 97 cents per square yard.

(2) By a corrupt use of a similar brush mattress in the specifications in contract No. 4637 of July 20th, 1891, for jetties at Fort Clinch, let nominally to William H. Walsh, but for the benefit of said conspirators, and by providing in the specifications for a bid for mattresses per square yard and fascines per cubic yard, but leaving it optional with the engineer in charge to use either fascines separately or mattresses, and by the use of the said other means provided in said scheme for suppressing competition, the said Oberlin M. Carter succeeded in awarding the said contract as aforesaid at 99 cents per square yard for brush mattresses, equivalent to about $3.56 per cubic yard, while the fascines themselves were awarded in the same contract at only $1.57 per cubic yard when placed in singly and whereas theretofore such mattresses had only cost the Government the price of the fascines in them by the cubic yard. And having so awarded said contract said Carter corruptly exercised his option as Engineer in charge, by allowing said contractor to put into the work 7,744 square yards of mattresses at $3.56 per cubic yard, and only 125 yards of fascines at $1.57 per cubic yard.

(3) In the specifications drafted by said Oberlin M. Carter as such Engineer in charge, for the contract No. 4820 next let

to Edward H. Gaynor, September 16, 1892; the said Oberlin M. Carter in pursuance of said fraudulent scheme and corrupt agreement, introduced the following novel features by which it was placed in the power of said Carter, at his will, to shut out all competition with the said conspirators in the bidding for such contract work, and which fraudulently secured to said conspirators an increase of four times the price for brush mattresses previously prevailing for same at the same locality.

That is to say: Carter so drafted the specifications for contract 4820 which were adopted on his recommendation, as to provide for three different designs of mattresses, any one of which might be called for at his option by the engineer in charge, and to be paid for at the same price per square yard for either design furnished by the contractor.

The first design of mattress so provided for corresponded to the log-mattress 18 inches thick, Exhibit D hereinbefore referred to.

The second design of mattress so provided for corresponding to the brush or fascine mattress, Exhibit C, hereinbefore referred to, except it had an additional cross layer of fascines in it, the additional fascines being spaced the same distance apart as the cross poles.

The third design of mattress so provided for corresponding to the brush or fascine mattress 9 inches thick, Exhibit C, and being the same as the second design without addition of the cross fascines.

And while prior to the formation of said fraudulent scheme the prevailing price in said Savannah District of the first design of mattress was double that of the third design, said Oberlin M. Carter joined them in his specifications to be bid on at one price.

And when by means of suppressing competition through said fraudulent scheme said Oberlin M. Carter succeeded in awarding said contract to Edward H. Gaynor for the benefit of said conspirators, at the price of $1.05 per square yard surface measure, equivalent to $4.20 per cubic yard for brush material in the 3rd design, or 300 per cent. higher than the prices which had prevailed in the same locality, said Oberlin M. Carter fraudulently exercised the option reserved to him as such engineer in charge under the specifications, in the manner of which the conspirators only were apprised before the bidding, and allowed the conspirators to put in all brush mattresses of the Third and cheapest design, as aforesaid.

(4) In the specifications drafted by said Oberlin M. Carter

as such engineer in charge for the contract No. 4960 next let to the Atlantic Contracting Company October 22, 1892, known as the "Big three million dollar contract for Savannah Harbor," the said Oberlin M. Carter, in pursuance of said fraudulent scheme, put in the same three designs of mattresses to be bid on at one price, as in contract No. 4820 and giving the same option to the engineer to select after the letting of the contract any one of the three for use in the construction, and having succeeded by means of said fraudulent scheme in awarding said contract to the Atlantic Contracting Company for the benefit of said conspirators, at the exorbitant and fraudulent price of 95 cents per square yard of mattress surface, equivalent to $3.80 per cubic yard for brush material in the 3rd Design, the said Oberlin M. Carter as such engineer in charge fraudulently exercised the option reserved to him as Engineer in charge and allowed the conspirators to put in all the mattresses of the third and cheapest design.

(5) Your orators aver and charge that not content with the fraudulent addition of about 300 per cent. to the cost of the fascine mattresses secured to the contractor in the letting of the contracts as aforesaid, the said Oberlin M. Carter under contracts Nos. 4820 and 4960, commenced about September, 1893, to allow the contractors operating said contracts for the benefit of said conspirators, to supply in lieu of the single mattress provided for in the specifications, and to put into the jetties at one time and at one launching, a construction of from 4 to 8 or more of single mats piled up one on top of the other and forming what is called a multiple mat, in which each single mat constituted a course or layer, but from which a large part of the material required by the designs of brush mattress in the specifications was omitted, and which multiple mat was very much cheaper for the contractor to put in, than the cost of putting in the single mats composing it separately, as the specifications indicated they would be put in and authorized the Engineer to require, and as other proposed bidders had to estimate for in putting in their bids.

And said Carter allowed said contractors not only to put in said material and work not in conformity even to the cheapest design of mattress provided for in the specifications, but of the poorest and cheapest and most inferior material which he could allow passed without detection of the fraud through a fraudulent and strained construction of the specifications. And said Oberlin M. Carter as such Engineer in charge, approved for payment and paid the accounts of said

contractors for such work at contract prices for said work so put in.

(6) Your orators further aver and charge that by Act of Congress passed in 1888 and repeated in Act of 1890, Supplement Revised Statutes, page 600, it was provided that river and harbor contracts shall be made "after sufficient public advertisement for proposals in such manner and form as the Secretary of War may prescribe." That Section 520 of the Army Regulations prescribed by the Secretary of War, prescribed and prescribes that the length of time for advertising for proposals for services by contractors for supplies or services should be 30 days or more or 10 days or less according to the needs of the service; large contracts for purchases or services should be 30 days or more. That section 519 of the Army Regulations prescribed that:

"Any officer charged with the duty of making a contract or purchase is responsible under the laws and regulations for his action. Permission or orders to make a contract or purchase without competition will not justify the procedure and will not be given."

And your orators aver and charge that while prior to 1890 the contractors in the Savannah District were mostly for comparatively small expenditures, from about $15,000 to $110,000; that after 1890 some of the contracts ran up to several million dollars each, being over $3,000,000 for Savannah Harbor contract No. 4960 for 1892, over $1,000,000 for Savannah Harbor contract No. 6515 for 1896, and over $2,000,000 for the Cumberland Sound contract No. 6517 of 1896. Nevertheless said Oberlin M. Carter as such engineer in charge in pursuance of said scheme to defraud the United States and to suppress competition, did not advertise the letting of any of the contracts let by him from 1891 to 1897 inclusive for 30 days or more, but the advertisements for many of said lettings being run only for 15 to 22 days in the local papers, and for a less time in the Engineering papers in which Government advertisements were required to be published and the time said advertisements were so run, not being a sufficient public advertisement to enable contractors in different parts of the United States to ascertain the details sufficiently to intelligently put in competitive bids.

(7) Your orators further aver and charge that from 1891 to 1897, inclusive, the said Oberlin M. Carter in pursuance of said fraudulent scheme to defraud the United States, systematically withheld from applicants therefor, as far as he

could consistent with the concealment of the fraud, the specifications for contracts advertised by him, and delayed and hindered such applicants in obtaining such specifications to the end that competition with said conspirators in proposals for contracts might be and was suppressed.

(8) Your orators further aver and charge, that by applying said fraudulent scheme to the drafting of the specifications, in the manner hereinbefore described for contracts No. 4572 and 4820, each of the contracts subsequently advertised and let in said Savannah District, and by applying said fraudulent scheme in suppressing competition by shortness of advertising for proposals for contracts and by withholding specifications and delaying applicants in obtaining the same, and by giving secretly to the said conspirators information as to how the said Carter, as engineer in charge, would exercise his discretion in construing specifications purposely by him made ambiguous or uncertain, the said Oberlin M. Carter, as engineer officer in charge, succeeded in awarding at high, exorbitant and fraudulent prices, every jetty contract let by him in said Savannah District from 1891 to 1897, inclusive, to the said conspirators or to some one of them, or to some person or corporation, for their benefit, except one small contract, No. 5359, for Savannah River near Augusta, let to Albert J. Twiggs, July 5, 1893, and as to this one exception the said Carter applied such stringent and unfair construction of the specifications as to make the performance of the contract ruinous to the contractor, and thus prevented him from any further competition with said conspirators. A list and the dates of said contracts so fraudulently let at high, exorbitant and fraudulent prices, about 300 per cent. above the fair value of the same, for the benefit of said conspirators, from 1891 to 1897 inclusive, reference being had to the War Department file number, being as follows:

4,572, May 4, 1891, John F. Gaynor, Contractor, Improvement at Cumberland Sound.

4,637, July 20, 1891, W. H. Walsh Contractor Improvement at Fort Clinch.

4,655, Sep. 9, 1891, John F. Gaynor Contractor, Improvement at Savannah River, Augusta.

4,820, Sep. 16, 1891, E. H. Gaynor Contractor, Improvement at Cumberland Sound.

4,960, Oct. 22, 1892, Atlantic Contracting Co., Contractor, Improvement at Savannah Harbor.

4,963, Oct. 24, 1892, W. H. Walsh Contractor Improvement at Savannah River, Augusta.

5,127, Dec. 20, 1892, Atlantic Contracting Co., Contractor, Improvement at Darien Harbor.

5,133, Dec. 20, 1892, Atlantic Contracting Co., Contractor, Improvement at Altamaha River.

5,253, Mch. 1, 1893, Atlantic Contracting Co., Contractor, Improvement at Darien Harbor.

5,254, Mch. 20, 1893, Atlantic Contracting Co. Contractor, Improvement at Brunswick Harbor.

5,811, Nov. 15, 1894, Anson M. Bangs, Contractor, Improvement at Cumberland Sound.

6,049, Apr. 20, 1895, W. T. Gaynor Contractor, Improvement at Darien Harbor, &c.

6,515, Oct. 8, 1896, Atlantic Contracting Co., Contractor, Improvement at Savannah Harbor.

6,517, Oct. 8, 1896, Atlantic Contracting Co., Contractor, Improvement at Cumberland Sound.

Under each and all of which contracts so fraudulently let the said Oberlin M. Carter as such engineer officer in charge, in pursuance of said scheme to defraud the United States, allowed the said contractors to put in cheap and inferior material not in accordance with the specifications in the contracts, and fraudulently exercised in favor of the contractors the options so fraudulently reserved to him in the specifications as engineer in charge. And under each of which contracts, the said Oberlin M. Carter as such engineer officer in charge in pursuance of said fraudulent scheme approved for payment, and paid whenever in funds as disbursing officer, the accounts of the said contractors for such work at the high, exorbitant and fraudulent prices so provided in said contracts so fraudulently let.

VI.

The Division of the Money.

Your orators further aver and charge that the profits of every one of said contracts so fraudulently let for the benefit of said conspirators as aforesaid, from 1891 to 1897 inclusive were divided from time to time between said conspirators.

(1) That in the division between Benjamin D. Greene, John F. Gaynor and Oberlin M. Carter, of the net profits of

the contracts so fraudulently obtained prior to the contract No. 4820 of Sept. 16th, 1892, hereinbefore referred to, your orators are unable to state exactly what share was allotted and apportioned to the said Oberlin M. Carter, but your orator avers that amounts aggregating $16,000, were traced with reasonable certainty from the profits of said contracts back into the possession of said Oberlin M. Carter, after he had as disbursing officer paid out the same on the contracts. How much more the said Carter may have been apportioned as his share of the profits on said prior contracts is to your orators unknown.

(2) Your orator avers and charges, however, that commencing with the contract No. 4820 of September 16th, 1892, let in the name of Edward H. Gaynor, contractor, that after the payment of the cost of the work and after the payment to the other persons parties to the said fraudulent scheme as aforesaid, the profits amounting to over two million dollars ($2,000,000), of all the aforesaid contracts so fraudulently let as aforesaid, were divided from time to time, between Oberlin M. Carter, Benjamin D. Greene and John F. Gaynor in three equal shares, one of which shares was apportioned to the said Oberlin M. Carter, as his share of the profits arising from the consummation of said scheme to defraud the United States.

(3) That said Oberlin M. Carter, as engineer officer in charge of said Savannah District, usually had funds to his credit as disbursing officer in the Merchants' National Bank of Savannah, Ga., or with the Assistant Treasurer of the United States at New York, intrusted to him by the Government for disbursement to contractors on Government contracts, and when in funds during the operation of said fraudulent scheme in said Savannah District, he usually paid the contractors at the beginning of each month for the amount of the vouchers approved by him for the work of the preceding month, reserving 10 per cent. each month until the last payment on the contract.

That the better to secure his share in the fraudulent profits of the contracts, it was usual for said Oberlin M. Carter as such disbursing officer to issue the checks for the monthly payments to the contractors in two batches. One batch was deposited in the local banks at Savannah and Fernandina and used in defraying the cost of the work, and in payments to E. H. Gaynor and W. T. Gaynor and minor agents of the principal conspirators, and the other batch of checks repre-

senting the net profits, would usually be taken by said Oberlin M. Carter in person to the City of New York, and the proceeds of said checks, after said Carter was paid therefrom $75 for an allowance for his trip to New York, would be divided between said Benjamin D. Greene, John F. Gaynor, and Oberlin M. Carter, each getting a third as aforesaid.

That sometimes said Oberlin M. Carter did not go on to New York and carry the disbursing checks there for division, but would send the checks to the said Benjamin D. Greene, or John F. Gaynor who would, at the direction of the said Oberlin M. Carter pay over his third of the fraudulent profits as aforesaid, to Robert F. Westcott, (now deceased, the former father-in-law of said Carter) who would invest it and turn over the investment to said Oberlin M. Carter or otherwise dispose of it for the use and benefit of said Carter as said Carter directed.

(4) That although the work was authorized by act of Congress, the money for payment of the bulk of the work under contracts of Oct. 8, 1896, No. 6515 for Savannah Harbor and No. 6517 for Cumberland Sound, let in the name of the Atlantic Contracting Company, contract, was not available until July 1st, 1897. That by reason of the fact that all the profits of the previous contracts had been divided between the parties to the fraudulent scheme it became necessary that the parties interested should put up the money to carry on the work under these contracts of Oct. 8, 1896, until July 1, 1897, when the appropriation of money by Congress would be available, as the general plan of issuing disbursing checks monthly to carry on the work theretofore pursued could not be resorted to. To meet this necessity on or about the first day of January, 1897, the said persons devising said scheme as aforesaid, communicated each with the other, and agreed among themselves, that the said Benjamin D. Greene, John F. Gaynor and Oberlin M. Carter, would each respectively advance approximately one-third of the amount which it might be necessary from time to time to advance to carry on the work under said contracts, until such time as the money appropriated by Congress for payment of the work under said contracts should become available. And it was then and there further agreed between said conspirators that all of the provisions of said scheme to defraud the United States which had been in operation by and between the said parties in said district from 1891 to that time as aforesaid, should be applied in and to the execution and completion of the work under said

contracts of October 8, 1896, which had been so fraudulently let as aforesaid, and in the obtaining of the money for the fraudulent accounts which should be rendered under said contracts to the said Oberlin M. Carter as such engineer officer in charge as aforesaid, and in the division of the said moneys between the said conspirators, except that the moneys so advanced by said Benjamin D. Greene, John F. Gaynor and Oberlin M. Carter, to carry on the work, should be repaid them before the division of the profits between them as aforesaid. That in pursuance of the said scheme to defraud so modified as aforesaid, the said Benjamin D. Greene, John F. Gaynor and Oberlin M. Carter did from time to time each advance moneys to carry on the work under said contracts of October 8, 1896, until July 1, 1897, when the appropriation by Congress became available.

And the said Oberlin M. Carter as engineer did approve accounts rendered by said conspirators in the name of the Atlantic Contracting Company for large amounts charged for cheap and inferior work not done in accordance with the specifications of the contracts and at the high, exorbitant and fraudulent prices at which said contracts had been so fraudulently let, and did on or about July 6th, 1897, pay upon said accounts so approved by him the sum of $575,749.90, which said amount less the deductions for moneys so advanced by said Benjamin D. Greene, John F. Gaynor and Oberlin M. Carter for carrying on the work, and for the shares of the lesser conspirators and for advances to further carry on the work was divided in thirds between the said Benjamin D. Greene, John F. Gaynor and Oberlin M. Carter.

And the said conspirators have continued to aid and abet each other to this day in their endeavor to obtain from the United States additional moneys for work alleged to have been done under said contracts of October 8th, 1896, so fraudulently obtained at the exorbitant and fraudulent prices secured in said contracts by the operation of said scheme to defraud, and for the cheap and inferior material and work put into said construction under said contracts not in accordance with the specifications.

VII.

Carter's Investments.

(1) Your orators aver and charge that Oberlin M. Carter started out in his career in the Savannah District, with-

out any income other than that of his salary and commutation as officer in the Corps of Engineers in the United States Army, ranging from $2,208 per annum as Lieutenant in 1890, to $3,269.50 per annum as Captain in 1897. In fact prior to 1891, he had great difficulty in making ends meet financially, and frequently resorted to borrowing money from Benjamin D. Greene, one of the contractors whose work he was then supervising. Following the formation of the scheme to defraud as aforesaid however in 1891, the said Oberlin M. Carter passed from the condition of a borrower to the condidition of a capitalist, by the investment of the greater portion of his share of the fraudulent and illegal profits of the contracts so fraudulently let by him as Engineer in charge for the benefit of said conspirators as aforesaid.

These investments were secretly made by the said Oberlin M. Carter in stocks, bonds, loans and real estate, the particulars of which investments were not known to your orators until within the past year, because of the means taken by the said Oberlin M. Carter to conceal the same.

(2) As before stated it is not known in what proportion said Carter shared in the illegal profits of the 1891 contracts so fraudulently let by him further than that $16,000 is traced from that source into deposits made by him from Dec. 1891, to Nov. 7th, 1892, and from which investments were made by him in stocks and bonds to the amount of $13,438.75.

After that, however, commencing with the division of the profits under contract No. 4820 of September 16th, 1892, the division was made of the net profits, as hereinbefore set forth, between Benjamin D. Greene, John F. Gaynor, and Oberlin M. Carter, by thirds each. The following table gives in one column a statement of the dates when said divisions of the profits of said fraudulent contracts were so made, by thirds as aforesaid, and in the next column gives said Carter's share of the profits at said respective dates, and is obtained by adding to the previous shares so obtained by said Carter his share obtained at the respective date, so as to show his accumulated profits, or the aggregate of his profits at said respective dates. And in the next column gives the aggregate of said Carter's investments from said fraudulent divisions from the beginning, held by him on said respective dates.

Statement of the Aggregate of Thirds of Divisions and of the Aggregate of Investments held by Carter at Corresponding Dates.

Number and Dates of Division.		Aggregate of Thirds, Exclusive of $1,575, Arbitrary allowance Carter's Trips to New York.	Aggregate of Investments at Cost.
Number.	Date.		
	1893.		
2	Jan. 3	12,900 04	14,320 00
3	Feb. 10	28,900 04	23,670 00
4	Mch. 13	44,900 04	46,526 25
5	Apl. 14	65,618 15	66,282 50
6	May 8	80,618 15	66,391 25
7	June 5	93,118 15	79,053 75
8	July 11	129,118 15	127,816 25
9	Aug. 7	142,118 15	127,816 25
10	Sept. 6	166,418 15	140,641 25
11	Oct. 10	178,418 15	163,591 25
12	Nov. 6	184,418 15	175,947 50
13	Dec. 4	205,418 15	182,128 75
	1894.		
14	Jan. 8	221,918 15	193,766 25
15	Feb. 5	239,918 15	214,337 50
16	Mch. 5	247,918 15	233,033 75
17	July 9	277,536 02	241,237 50
18	Sept. 10	419,586 02	241,237 50
19	Oct. 5	440,586 02	294,142 50
20	Nov. 12	450,586 02	341,919 50
21	Dec. 11	458,865 93	431,453 75
	1895.		
22	Jan. 17	468,507 59	441,453 75
23	Feb. 4	478,507 59	441,453 75
24	Mch. 5	485,578 47	441,453 75
25	Apl. 8	508,886 80	453,153 75
26	May 22	517,981 82	466,760 00
27	June 7	536,725 63	463,690 00
28	July 5	582,256 32	493,798 75
29	Aug. 5	589,666 31	493,798 75
30	Sept. 3	589,802 91	493,798 75
	1896.		
31	May 12	595,836 35	561,471 50
	1897.		
32	July 6	722,528 02	690,301 85
			Aug. 6, 1897.

Your orators further aver and charge that the particular description of all said investments of the said Oberlin M. Carter's share of said divisions of the illegal and fraudulent profits of said contracts, and the details of the manner in which said Carter's share of each division is traced into the particular investments, are so voluminous that for convenience of pleading your Orator has filed herewith as Exhibit E to this bill an outline of the same as bill of particulars, to which the usual leave of reference is prayed as often as may be desired.

(3) Your orators further aver and charge the investments made by said Oberlin M. Carter of the funds intrusted to him as disbursing officer and which were so returned to him by the said conspirators as his share of the fraudulent fruits of the contracts so fraudulently let by him were invested from time to time by said Carter to a large extent in investments which made to him good returns in income.

The following table gives a statement at different dates of said Carter's income from this source as far as ascertainable and from his salary and commutation as an officer in the United States Army compared with his personal expenditures (not investments) as far as ascertainable at corresponding periods:

Comparison of Carter's Income and Expenditures.

1890	Gross expenditures	$ 4306.60
"	Gross income from salary and securities	2208.
1891	Gross expenditures	5897.83
"	Gross income from salary and securities	2836.91
1892	Gross expenditures	8354.24
"	Gross income from salary and securities	3269.50
1893	Gross expenditures	14982.74
"	Gross income from salary and securities	8882.
1894	Gross expenditures	14410.88
"	Gross income from salary and securities	16155.50
1895	Gross expenditures	20113.92
"	Gross income from salary and securities	23390.50
1896	Gross expenditures	28611.57
"	Gross income from salary and securities	28501.05

From which it will be seen that said Carter spent but a very little more (comparatively speaking) than the income from his share of the trust funds so fraudulently divided between the contractors and himself.

The 8th Avenue Property.

(4) Your orators further aver and charge, that among the investments so made by the said Oberlin M. Carter, from said fund so intrusted to him as such disbursing officer and so diverted to his own use through said fraudulent scheme as aforesaid as traced in Exhibit E aforesaid, was the purchase for $39,763.75 by the said Oberlin M. Carter through Robert F. Westcott of certain property on 8th avenue in the Borough of Manhattan, City of New York, and which was conveyed to the said Oberlin M. Carter by Robert F. Westcott and wife, by deed dated January 7th, 1895, recorded on the records of the Register of said City and County of New York, in Liber 49, p. 456, for Section 3, and which is more particularly described as follows: "All that certain lot or parcel of land known and distinguished on a map of certain property of Henry Eckford, made by Daniel Ewen, City Surveyor, in September, 1829, on file in the office of the Register of the City and County of New York, by lot number 298, bounded and described as follows:

"Beginning at a point on the easterly side of 8th avenue in the Borough of Manhattan, City of New York, at the centre line of the block between 24th and 25th streets, running thence easterly and parallel with 24th street 100 feet, thence southerly and parallel with 8th avenue 24 feet 8 1-4 inches thence westerly and parallel with 24th street, 100 feet to the easterly side of 8th avenue and thence northerly along the easterly side of 8th avenue 24 feet 8 1-4 inches to the point or place of beginning, being premises known by the street number 286 Eighth avenue."

Your orators aver and charge that by reason of the fact that the said 8th avenue property was so purchased by the said Oberlin M. Carter, with the fund so intrusted to him as a disbursing officer as aforesaid, and so fraudulently diverted to his own use as aforesaid, the said Oberlin M. Carter took the title to the property under the implied trust to account to your orators for the same and to turn over, deliver and convey the same to your orators upon demand.

The Beirne Gordon Notes.

(5) Your orators further aver and charge that among the investments so made by the said Oberlin M. Carter, from said fund so intrusted to him as such disbursing officer and so diverted to his own use through said fraudulent scheme as aforesaid as traced in Exhibit E, as aforesaid, was a loan of $10,000 made by the said Oberlin M. Carter to Bierne Gordon of Savannah, Ga., made party defendant hereto, evidenced by a note of the said Bierne Gordon, dated November 4th, 1896, and due 5 years and 57 days after date thereof, and for said Carter's convenience Westcott having no interest therein, made payable to R. F. Westcott, for the principal sum of $10,000, and by similar interest notes for $300 each except the first one which was for $93.70, for the interest installments thereon falling due semi-annually, and which said principal note was thereafter endorsed by the said Westcott "without recourse" and delivered up to the said O. M. Carter, so endorsed. And which said principal note so endorsed was in the possession of L. Laflin Kellogg, one of the attorneys of said conspirators as late as the month of October, 1900, and by him produced in Court on October 3d, 1900, on the preliminary hearing had before Commissioner Shields in New York for removal of said Benjamin D. Greene et al. to Georgia for trial on the charge of conspiracy to defraud the United States as hereinafter more fully set forth.

That said loan so made by the said Oberlin M. Carter to the said Beirne Gordon as aforesaid, was secured, among other things, by a Life Insurance Policy, No. 219282, known as an Endowment policy of the Mutual Life Insurance Company of New York, for the sum of $5,000, which policy was delivered to the said Carter as such security, and said Carter, as your orators are informed, retained the possession of the same himself.

That, by reason of the fact that the said loan was so made by the said Oberlin M. Carter with the fund so intrusted to him as a disbursing officer as aforesaid, and so fraudulently diverted to his own use, as aforesaid, the said R. F. Westcott, to whom said notes were payable, and Oberlin M. Carter, to whom said notes were assigned without recourse, took title to the said notes and to the said insurance policy under the implied trust to account to your Orators for the same, and to deliver the same, or the proceeds thereof, to your orators upon demand. Your orators aver and charge, on

information and belief, that said insurance policy has matured, and that the said Mutual Life Insurance Company of New York who holds the surrender-value of said policy of insurance, merely as a stakeholder, is about to pay over the same with the consent of said Beirne Gordon to the holder of the said $10,000 note of the said Beirne Gordon, for the said Oberlin M. Carter, and will do so unless forthwith restrained by the summary orders and process of this honorable Court, and if allowed to be done, it will result in great loss and injury to your Orators.

Your Orators further aver and charge on information and belief that the said Beirne Gordon is willing and anxious to pay over to the proper party entitled, the entire balance due by him for the $10,000 loan made to him by the said O. M. Carter as aforesaid, when the proper person shall have been ascertained and decreed by a Court of competent jurisdiction, to afford him protection by its decree, and that he stands ready and willing as a stakeholder to stand to and abide such decree.

Orange, New Jersey, Property.

(6) Your Orators further aver and charge that, among the investments so made by the said Oberlin M. Carter, from said funds so intrusted to him as such disbursing officer, and so diverted to his own use through said fraudulent scheme aforesaid traced in Exhibit E aforesaid, was the purchase by the said Oberlin M. Carter, at the cost of $63,020.35 for land and improvements, through said Robert F. Westcott, of a half interest in certain real estate situate in Orange, Essex County, New Jersey, the half undivided interest in said land having been conveyed to said Oberlin M. Carter by deed made to him on January 25th, 1897, by Robert F. Westcott and wife, recorded in the office of the Register of Deeds for the County of Essex, New Jersey, in Book "S 30," page 550, and which said real estate and improvements were afterward divided and Carter's interest therein was conveyed to him in severalty by a partition deed made by the said Robert F. Westcott to the said Oberlin M. Carter, dated June 9th, 1899, and which said property so conveyed to said Oberlin M. Carter in severalty as aforesaid, being more particularly described as follows:

"Those two certain parcels or tracts of land situate in the

city of Orange, County of Essex and State of New Jersey described as follows:

Parcel No. 1. Beginning at the intersection of the southerly side of Highland avenue with the easterly side of Berkeley avenue, and running thence in an easterly direction along the line of Highland avenue 100 feet more or less, thence in a southerly direction 225 feet more or less to a point 75 feet east of the easterly line of Berkeley avenue, thence in a westerly direction 75 feet more or less to the easterly side of Berkeley avenue. thence in a northerly direction along the easterly side of Berkeley avenue 225 feet more or less to the point or place of beginning.

Parcel 2. Beginning at a point on the southerly side of Highland avenue distant 349 feet, more or less, easterly from the intersection of the southerly side of Highland avenue with the easterly side of Berkeley avenue, and running thence easterly along the southerly side of Highland avenue 247 feet more or less to land now or formerly belonging to J. H. Noyes, thence in a southerly direction along said land of said Noyes 225 feet more or less to land now or formerly belonging to Zadie W. W. Grant, thence in a westerly direction along the land of said Grant 247 feet more or less to a point 315 feet more or less from the easterly side of Highland avenue, thence in a northerly direction 225 feet more or less to the point or place of beginning."

Your orators further aver and charge that by reason of the fact that the said above described property was so purchased and paid for by the said Oberlin M. Carter, with the funds so intrusted to him as a disbursing officer as aforesaid, and so fraudulently diverted to his own use as aforesaid, the said Oberlin M. Carter took the title to the property under the implied trust to account to your orators for the same and to turn over, deliver and convey the same to your orators upon demand.

Other Investments.

(7) Your orators further aver and charge that among the other investments so made by the said Oberlin M. Carter from said fund so intrusted to him as such disbursing officer and so diverted to his own use through said fraudulent scheme as aforesaid as traced in Exhibit E as aforesaid, were large amounts of stocks, bonds and notes, the description of which is set forth in said Exhibit E, a large part of

which is out of the territorial jurisdiction of this Court or otherwise concealed or converted into other property by those holding the same for the benefit of said Oberlin M. Carter, and all of which is held by those holding the same with notice of the fraud under the implied trust to account to your orators for the same or for the proceeds thereof, and to turn over, deliver and convey the same to your orators upon demand.

(8) Your orators further aver and charge on information and belief, that among the investments so made by the said Oberlin M. Carter from said funds so intrusted to him as such disbursing officer and so diverted to his own use through said fraudulent scheme as traced in Exhibit E as aforesaid were large amounts of stock and bonds and notes which either specifically or through the proceeds of the sale of the same, the said Oberlin M. Carter, about the time of the confirmation of his sentence by the President as hereinafter mentioned, and shortly thereafter, caused to be delivered to his brother, the said I. Stanton Carter, and to his uncle, the said Lorenzo D. Carter, for concealment and safe keeping for the benefit of the said Oberlin M. Carter. And that the said I. Stanton Carter, and Lorenzo D. Carter, thereupon agreed with the said Oberlin M. Carter to co-operate with him and together, in the holding and concealment from your orators of the said securities and proceeds thereof.

That in pursuance of said agreement the said I. Stanton Carter and the said Lorenzo D. Carter from time to time secretly brought from New York and elsewhere into the State of Illinois the investments and proceeds thereof aforesaid and the rents of the property on 8th avenue, New York City, and in Orange, New Jersey, aforesaid, and that said I. Stanton Carter and Lorenzo D. Carter now hold the said securities or the proceeds thereof, and the rents so collected for the benefit of the said Oberlin M. Carter, but with full notice of your orators' rights and equities therein, and with the duty imposed upon them by law to account to your orators for the same as a trust fund.

\$23,000 Raised by Mortgage on 8th Avenue Property.

(9) Your orators further charge on information and belief that on or about October 8th, 1900, the said I. Stanton Carter under power of attorney from said Oberlin M. Carter, hereinafter mentioned, received from the American Mort-

gage Company of New York, the sum of $23,000.00 as a loan to the said Oberlin M. Carter secured on said property on 8th avenue, New York City, and now holds the same or the investment thereof concealed from your orators.

That while said loan was made under circumstances, as set forth in paragraph VIII subdivision (5) of this bill, which put the said American Mortgage Company upon notice of your orators' rights in said properties, yet your orators are informed that the said American Mortgage Company will contend that they are protected in making the loan by a State Statute of New York protecting purchasers and mortgagees of the legal title where a record of *lis pendens* is not filed in the office provided by that enactment. That that matter is now pending for adjudication in the principal suit filed in the Circuit Court of the United Sattes for the Southern District of New York by your orators against the several defendants named in this bill and against the said American Mortgage Company, to which suit this bill is auxiliary. That in equity and good conscience it is the right and duty of your orators to have held up and to preserve through the processes of this court the said sum of $23,000 so held and concealed by the said I. Stanton Carter and to have the same or the part thereof, if any, recovered, applied by the decree of this court to your orators' claim against the said Oberlin M. Carter, and in any event should the mortgagees aforesaid be decreed in the suit pending as aforesaid to have taken said mortgage free from the rights of your orators, to have the same applied to your orators' claim by the decree of this court.

Rents Collected by I. S. Carter.

(10) Your orators further aver and charge on information and belief, that, acting under the power of attorney from Oberlin M. Carter, as set forth in paragraph IX of this bill, the said I. Stanton Carter also collected some $3,000.00, or other large sum, as net rents and profits of the property on the 8th avenue, New York, and in Orange, New Jersey, before mentioned.

Coupons Collected by I. S. Carter.

(11) That on or about June 27th, 1901, the said I. Stanton Carter collected through the firm of N. W. Harris & Company at Chicago, Illinois, coupons matured upon the following described securities constituting part of the investments made with said trust funds by said Oberlin M. Carter, as shown on Exhibit E, so received and held by him for account of said Oberlin M. Carter, to-wit:

July, 1900, coupons on 5 Joliet & No. Indiana R. R. bonds, Nos. 318 to 322, @ $35	$175.00
Aug., 1900, coupons on 10 N. Y. Lackawanna & Western R. R. bonds, Nos. 1171 to 1180, @ $25	250.00
Sept., 1900 coupons on 15 Delaware & Hudson R. R. Bonds, Nos 8283, 121 to 125, 293, 528, 593, 840, to 842, 1648 to 1649, @ $35	525.00
	$950.00

Which collection or a large part thereof your orators aver and charge now stands to the credit of the said I. Stanton Carter upon the books of the said N. W. Harris & Co., who are made parties defendant hereto in order that the said fund may be held up pending this proceeding and that they may be bound by the final decree of this court herein.

Rents Collected by L. D. Carter.

(12) Your orators further aver and charge on information and belief, that the said Lorenzo D. Carter, in pursuance of the agreement made between him and Oberlin M. Carter and I. Stanton Carter, aforesaid, collected some $2,200.00 or other large sum as net rents and profits of the property on 8th avenue, New York, and in Orange, New Jersey, before mentioned.

L. D. Carter Sells Securities.

(13) That among the securities constituting a part of the investments into which the said trust funds had been so diverted by the said Oberlin M. Carter, as engineer officer and disbursing officer as set forth in Exhibit E, the said Lorenzo D. Carter, in pursuance of the agreement between him and the said Oberlin M. Carter and I. Stanton Carter, received and

sold, thus converting into money, the following securities, sold as follows:

Through J. F. Harris—Broker—Chicago:

Sept. 12, 1900, 10 M.-N. Y. Lackawanna & Western Construction Mortgage 5 per cent. bonds, Nos. 1171 to 1180, net proceeds deposited by said L. D. Carter to his credit in the Oakland (Ill.) National Bank $11,883.54

Through 2nd National Bank of Charleston, Illinois:

Oct. 11, 1900, 2 M Milwaukee, Lake Shore & Western 6 per cent. bonds, Nos. 697-847, proceeds..... $2,649.60

Oct. 17, 1900, 2 M Milwaukee, Lake Shore and Western 6 per cent. bonds, Nos. 698, 699, Proceeds.... $2,650.00

Through Oakland (Ill.) National Bank:

Oct. 15 and 22, 1900, 4 M Milwaukee, Lake Shore and Western 6 per cent. bonds, Nos. 839, 843, 844 and 846, proceeds $5,315.00

Through 1st National Bank of Charleston, Ill.:

Oct. 19, 1900, 2 M Milwaukee, Lake Shore & Western 6 per cent. bonds, Nos. 845 and 848, proceeds.. $2,654.00

L. D. Carter Invests in Other Securities.

(14) That from the proceeds of said moneys in his hands being managed for said Oberlin M. Carter, as aforesaid, the said Lorenzo D. Carter, on or about February 13th, 1901, purchased through the said N. W. Harris & Co. at Chicago, Illinois, securities as follows:

21 M bonds, 4 per cent. Kentucky Central Ry. Co., Nos. 3776—3782 to 3798—5960 to 5961, 5964, cost..$20,884.35

which bonds and the profits and the income thereof the said L. D. Carter holds under the implied trust to account to your orators for the same and to turn over and deliver the same to your orators upon demand.

I. S. Carter Invests in Other Securities.

(15) That from the proceeds of said moneys in his hands being managed for said Oberlin M. Carter, as aforesaid, the said I. Stanton Carter, on or about March 11, 1901, purchased through said N. W. Harris & Co. at Chicago, Illinois, bonds as follows:

1 M bond, 5 per cent., Michigan Telephone Co., No. 2472, cost	$1,010.00
1 M bond, 4 per cent., Kentucky Central Ry. Co., No. 5119	990.00
Interest advance	17.07
	$2,017.01

Which bonds and the profits and income thereof the said I. Stanton Carter holds under the implied trust to account to your orators for the same and to turn over and deliver the same to your orators upon demand.

VIII.

The Board of Inquiry.

(1) Your orators further aver and charge that it having been determined by the new Chief of Engineers, General John M. Wilson, who succeeded to that office about February, 1897, to make a general change of the officers in the Corps of Engineers from one district to another for the general good of the service, and that fact becoming known to the said Oberlin M. Carter, he succeeded in causing himself to be appointed as Military Attache to the court of St. James, and also a member of the Nicaragua Canal Commission, and the said O. M. Carter being superseded as engineer officer in charge of the Savannah District only July 17, 1897, his successor, Captain Cassius E. Gillette, took charge of the district July 20th, 1897.

Within two weeks after taking charge of the Savannah District facts began to come to the attention of Captain Gillette showing irregularities in the administration by said Carter of the affairs of the district of the gravest character.

It was developed that a large number of the official files and documents of the office had been with a great deal of his private papers packed up by Carter in a file case, which he caused to be boxed and which he directed to be shipped to him. This box was detained.

This state of affairs led to the appointment by the president of a board of inquiry, of which Colonel George L. Gillespie (now General Gillespie) was president.

In the meantime the said Oberlin M. Carter hurried back from England. Arriving in New York City early in Septem-

ber, 1897, said Carter expected to be arrested, and took out of his safety deposit box securities of the cost value of $414,437.50 which he had there, constituting a part of the investments described in Exhibit E, which he had made from his share of the illegal profits of the contracts as aforesaid, and turned them over to the said Benjamin D. Greene and John F. Gaynor at the Hoffman House for safe keeping.

These securities were in a day or two delivered by said Benjamin D. Greene to the said Robert F. Westcott for safe keeping for said Carter, and Westcott placed them in his safety deposit vault. Shortly thereafter the facts in regard to Carter's guilty connection with said Benjamin D. Greene and John F. Gaynor in the contracts began to be given publicity in the newspapers and the said Robert F. Westcott, upon the advice of his counsel and in the presence of his counsel, delivered back to Carter all of the aforesaid securities so turned over to Westcott by said Greene, and took said Carter's receipts for the same in detail, which receipts are dated respectively October 11, 1897, and October 29, 1897, and which original receipts came to the knowledge and into the possession of your orators on or about the month of July, 1900, and are held subject to the inspection of the court.

Your orator further avers and charges that said Board of Inquiry appointed to inquire into the propriety of Court-Martial proceedings met in Savannah on September 21, 1897, and the said detained file case was opened by the said Oberlin M. Carter in the presence of said Board, and in it were found a large mass of incriminatory evidence tending to show conspiracy between the said Benjamin D. Greene, John F. Gaynor and Oberlin M. Carter in such contract work, aforesaid in Savannah District, and showing that said Carter's personal expenditures had run up from about $4,300 per annum in 1890 to $28,611.67 in 1896, as hereinbefore set forth, and showing that the income so spent by said Carter was derived from a large amount of securities which Carter was handling during said period. And said Carter in order to explain his possession of said securities, and his spending of the income from the same, caused the said Benjamin D. Greene and said John F. Gaynor to come before said Board and make statements in his presence to the effect that neither the said Oberlin M. Carter nor the said Robert F. Westcott had been in any way beneficially interested in any of said contracts let in said Savannah District, and the said Carter himself made before the said Board a like statement, and further

stated that the large income so spent by said Carter from securities was from gifts given him by the said Robert F. Westcott, his former father-in-law, from the private fortune of said Westcott, to whom the securities belonged and in which Carter had no interest. Your orators further aver and charge that after due investigation said Board of Inquiry recommended the convening of a Court Martial to try said Oberlin M. Carter on the charge, among other things, of conspiracy with the said Benjamin D. Greene, John F. Gaynor and others to defraud the United States as hereinbefore set forth, although at that time the details by which the said conspiracy was carried out and the money divided between the conspirators as hereinbefore set forth was not fully known.

The Court Martial.

(2) Your orators further aver and charge that in due course a Court Martial was duly constituted and convened at Savannah on the 12th day of January, 1898, of which General Elwell S. Otis was president, and the other members being all distinguished engineers or officers distinguished in other branches of the military profession. The trial of Captain Carter before this Court Martial on the charges was continued through three months and attracted more attention and was given great publicity through the newspapers and otherwise than any other similar event in the history of the country, and the details of the evidence published every day in almost every important newspaper throughout the United States gave a notoriety to the facts in issue in the case such as probably no similar case has ever had.

Before this Court Martial the said Carter and the said Benjamin D. Greene were volunteer witnesses in behalf of said Carter, and again stated that neither said Robert F. Westcott nor the said Carter had been interested beneficially in said contracts, and that the said securities handled by said Carter were the securities belonging to the private fortune of the said Robert F. Westcott, which said Carter had no personal interest, but the income from which had been given him by said Westcott. Your orators further aver on information that the said Oberlin M. Carter endeavored to induce the said Robert F. Westcott to appear before said Court Martial and testify falsely to the same effect, but the latter

while he did not desire to testify against the husband of his dead child, would not consent to go upon the stand otherwise than to tell the truth of the transaction, and to disclaim any interest in these securities and investments. To avoid testifying against his said son-in-law, said Robert F. Westcott departed to Europe and remained away during the Court Martial proceedings.

The said Oberlin M. Carter however induced his brother-in-law, Robert E. Westcott to voluntarily appear before said Court Martial and to testify in his behalf as to said Robert F. Westcott having given "money" to said Oberlin M. Carter, to create the impression that the income so spent by said Oberlin M. Carter had been gifts from his father-in-law, although the said Robert F. Westcott had told the said Robert E. Westcott that this was not true.

The said Oberlin M. Carter also induced his own brother, I. Stanton Carter, defendant to this bill, who had been an inspector under said Oberlin M. Carter on the said contract work in Savannah District, and who was familiar with the fraudulent character of the work done, to testify in his behalf before the said Court Martial as to seeing Robert F. Westcott hand over money to said Oberlin M. Carter. And the said I. Stanton Carter was present at said Court Martial during said trial and was fully apprised of the fact that said Oberlin M. Carter then fully disclaimed any interest in said securities and investments other than in the income spent, which he claimed as having been given him by the said Robert F. Westcott.

Your orators further aver and charge that, by reason of the fact that the said Court Martial had no power to compel civilian witnesses to testify, and no power to compel such witnesses to produce books and papers, the evidence before said Court Martial did not develop the divisions of the money paid on said contracts, between the conspirators nor trace and locate the specific funds so divided into specific securities, as has since been done and set forth in this bill. Nevertheless the evidence of conspiracy to defraud the United States, entered into between the said conspirators in the letting of the contracts and in the doing of the work under them, and the possession by Carter of so large an amount of securities from which he was enjoying the income without any satisfactory explanation furnished proof so plain of the guilt of said Oberlin M. Carter that he was convicted by said Court

Martial and sentenced to dismissal from the army, to pay a fine of $5,000 and to be imprisoned at hard labor for five years.

The Appeal.

(3) Your orators further aver and charge, that an appeal was made by said Oberlin M. Carter to the President of the United States to review the judgment of the said Court Martial. That on account of the presence of public business consequent upon the pendency of the war with Spain, there was some delay in the disposition of said appeal, and the Attorney-General to whom a review of the evidence was referred by the President, did not reach a conclusion confirming said judgment until about the 29th day of September, 1899, and this was followed by the confirmation of the judgment by the President, following which the said Oberlin M. Carter was placed in confinement, and after some preliminary efforts made by him to obtain release by habeas corpus proceedings he was imprisoned in said Penitentiary at Fort Leavenworth, Kansas.

The Indictment of Greene and the Gaynors et al.

During the pendency of said appeal such original documents and evidence throwing light upon the frauds committed as aforesaid were in the possession of the President or the Attorney-General for him. As soon as the said appeal was disposed of, the said evidence was turned over to the District Attorney for the Southern District of Georgia, who forthwith proceeded to put said evidence before the Grand Jury for said District, and on the 8th day of December, 1899, said Grand Jury returned a true bill of indictment against the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connolly and Oberlin M. Carter, charging them with conspiracy to defraud the United States by and through said scheme to defraud as substantially set forth in this bill.

The Hearing for Removal.

(4) The said Benjamin D. Greene, John F. Gaynor, William T. Gaynor and Edward H. Gaynor were arrested in New York City on December 11th, 1899, on warrants issued by

John A. Shields, United States Commissioner for the Southern District of New York, based upon said indictment and affidavit thereto, and being in due course identified by evidence as the defendants therein, were committed in default of bail to await a warrant of removal from his Honor, Judge Addison Brown, the District Judge, to Georgia for trial. The Judge who held the matter under advisement some months, on June 26th, 1900, made an order referring the case back to the Commissioner to take evidence on the merits as to the guilt or innocence of the accused for the purpose of establishing probable cause of guilt.

On July 6th, 1900, the hearing was renewed before Commissioner Shields, and with some short recesses was proceeded with, and a large amount of oral and documentary evidence on all features of the case was put in on both sides and until December 23, 1900, when the case was submitted to the Commissioner for his finding on the evidence. On March 21, 1901, the Commissioner, who had the voluminous record under consideration in the meantime, made his finding of probable cause of guilt and again committed said defendants into custody for removal to Georgia for trial.

On the 23rd day of May, 1901, his Honor Judge Brown made an order affirming the finding of said Commissioner and directing the removal of the said defendants to Georgia for trial.

Your orators further aver and charge that while said hearings were being proceeded with your orator's agents and attorneys, by great labor and strenuous efforts, were enabled through the greater effectiveness of the processes of the Civil Courts, to obtain a large amount of documentary and other evidence from banks, brokers and others, unknown to your orators until then, demonstrating the division of the fruits of the said fraudulent scheme between the said conspirators as set forth in this bill.

The said Robert F. Westcott too had returned to the United States, and the case against his son-in-law Carter having been ended by his imprisonment under sentence in the penitentiary, expressed his willingness to testify as against the other conspirators to the facts within his knowledge and turn over to the Government all his checks, check books and documents bearing upon questions in issue. This the said Westcott did, and it was found by the Government's expert accountant, as testified to at said hearing, that while

a considerable part of the proceeds of said divisions of the profits of said contracts had passed through said Westcott's hands, and while a large part had been handled through the banks in Westcott's name under powers of attorney held by said Carter, that said Westcott had retained no part of the same, but that the same or the investment of the same almost immediately after division found its way into the possession of said Oberlin M. Carter, who proceeded to enjoy the income therefrom.

Notice to American Mortgage Company.

(5) The testimony of said Robert F. Westcott on said hearing before the said Commissioner, which was concluded October the 5th, 1900, was a notable event, and on account of the great interest which had been excited over the case throughout the country, and the testimony of the said Westcott denying that he had ever had any interest in these contracts, or ever had any pecuniary interest in the securities and investments aforesaid, and particularly in the said 8th avenue property and Orange, New Jersey, property, was given wide publicity through the newspapers and otherwise.

So that the said American Mortgage Company, party defendant hereto, whose principal officers are attorneys practicing law in the City of New York, had, as your orators are informed, believe and so charge, by the notorious character of the case, and by reason of the fact that said mortgage was executed by said Oberlin M. Carter while in prison, and otherwise full, actual and constructive notice, at and before October the 8th, 1900, the date they took said mortgage, that said Oberlin M. Carter held the title to said 8th avenue property in fraud and under the implied trust to account to your orators for the same, as aforesaid.

Nevertheless, the said American Mortgage Company with full notice of your orators rights as aforesaid, on October the 8th, 1900, while said hearing was in progress and accounts of the same were being published from day to day in the newspapers, accepted from said Oberlin M. Carter a mortgage on said 8th avenue property for the alleged consideration of $23,000 then and there alleged to have been loaned, which mortgage on its face put the said company on notice that it was executed by the said Oberlin M. Carter, while in the penitentiary at Fort Leavenworth, Kansas, as aforesaid.

By reason whereof your orators aver that said American Mortgage Company acquired no right in and through said mortgage as against the right and equity of your orators in said 8th avenue property as aforesaid.

IX.

Lorenzo D. Carter and I. Stanton Carter Join the Conspiracy.

(6) Your orators further aver that the said Lorenzo D. Carter, party defendant hereto, is an uncle of the said Oberlin M. Carter, and that Lorenzo D. Carter from the time of Oberlin M. Carter's conviction by said Court Martial up to this time has taken a strong and active part in endeavors to gain the said Oberlin M. Carter's freedom, and he as well as the said I. Stanton Carter have been from said time of Carter's conviction fully cognizant of the fact that the said Oberlin M. Carter had no interest in any of the aforesaid securities or investments, except such as he had acquired in pursuance of said scheme to defraud your orators as aforesaid. Nevertheless the said Lorenzo D. Carter and the said I. Stanton Carter did on or about the time of the confirmation of said Court Martial proceeding aforesaid, join said conspiracy to defraud the United States as aforesaid and agree with said Oberlin M. Carter to aid and abet him in holding and concealing from your orators the assets into which the said Oberlin M. Carter had so diverted the funds intrusted to him as disbursing officer as aforesaid.

Power of Attorney to I. Stanton Carter.

(7) In pursuance of said agreement the said I. Stanton Carter on or about the 2d day of October, 1899, accepted from said Oberlin M. Carter as your orators are informed, believe and so charge, a power of attorney from the said Oberlin M. Carter, authorizing the said I. Stanton Carter to convey or dispose of any of the aforesaid assets by and in the name and stead of the said Oberlin M. Carter, and especially designed to convey the said 8th avenue property in the City of New York, and the said Orange, New Jersey property, which Power of Attorney is recorded in the office of the Register of Deeds in and for the County of New York, in Liber 9, of Powers of Attorneys, page 314, on January 9th, 1901. And

your orators charge that said Power of Attorney is a cloud upon the title and menace to the interest of your orators in said property and in equity and good conscience should be cancelled.

8th Avenue Property Conveyed to Lorenzo D. Carter.

(8) That in pursuance of said agreement the said Oberlin M. Carter, by I. Stanton Carter, under said Power of Attorney, did on November 15th, 1900, by deed convey to the said Lorenzo D. Carter, and the latter did accept for the alleged consideration of $10,000, the equity of redemption in said 8th avenue property, which deed is recorded in the records of the Register's office of said City and County of New York, in Liber 74, Folio 158 Section 3, and that Lorenzo D. Carter holds the same with full notice of your orator's rights therein and under the implied trust to account to your orator for the same on demand.

Orange, N. J., Property Conveyed to Lorenzo D. Carter.

(9) Your orators further aver and charge that on the 23d day of October, 1900, the said Oberlin M. Carter by the said I. Stanton Carter under the aforesaid power of attorney by deed conveyed to Frank P. Blair of Chicago, Illinois, the aforesaid Orange, New Jersey property, which had been previously conveyed to said Oberlin M. Carter by deed of June 9th, 1899, as hereinbefore mentioned for the alleged consideration of one dollar, which deed is recorded in the office of the Register of Deeds of Essex County, New Jersey, in Liber "U. 33," p. 213. That said Frank P. Blair was one of the attorneys for said Oberlin M. Carter in the said Court Martial proceedings, and took the title to said property with full notice of the fraud by which the said Oberlin M. Carter had acquired the same, and took the same for the purpose of holding the same for the said Oberlin M. Carter. That notwithstanding said conveyance to said Frank P. Blair as aforesaid the said Oberlin M. Carter by said I. Stanton Carter under the aforesaid power of attorney by deed dated January 25th, 1901, and recorded in the office of the Register of Deeds for said County of Essex, New Jersey, in book "B. 34, p. 53," conveyed to said Lorenzo D. Carter of Oakland, Illinois, the same aforesaid Orange, New Jersey, property which had been so conveyed to said Frank P. Blair aforesaid

for the alleged consideration of $100.00. That the said Lorenzo D. Carter took the said conveyance to hold the said property for the benefit of said Oberlin M. Carter in pursuance of the aforesaid agreement he had made with said Oberlin M. Carter and with full knowledge of the fraud by which the Oberlin M. Carter had acquired the same as aforesaid.

That thereafter on May 13th, 1901, by quitclaim deed for the alleged consideration of one dollar, the said Frank P. Blair and Florida Blair, his wife, conveyed to the said I. Stanton Carter of Chicago, Illinois, the same Orange, New Jersey, property, which had been so conveyed to the said Frank P. Blair on October 23, 1900, as aforesaid, and the said I. Stanton Carter took the said conveyance to hold the said property for the benefit of said Oberlin M. Carter, and with full knowledge of the fraud by which the said Oberlin M. Carter had acquired the same as aforesaid.

Your orators further aver and charge that by reason of the premises the said Lorenzo D. Carter and the said I. Stanton Carter hold the title to the said Orange, New Jersey, property so conveyed to them under the implied trust to account to your orators for the same, and to turn over, deliver and convey the same to your orators upon demand.

X.

Your orators further aver and charge that the said I. Stanton Carter and the said Lorenzo D. Carter have been and are collecting the rents, issues and profits of the said property on 8th avenue in New York City, and of the said Orange, New Jersey property aforesaid, and removing and secreting the same. That in case of the destruction of the improvements on said property by fire your orators' interest in said property would be entirely swept away and lost, and that it is necessary for the protection of the interests of your orators that a receiver be forthwith appointed by this court to take charge of, hold and protect until the further order of the Court, all of the aforesaid properties within the jurisdiction of this Court, and to take charge of and hold such other of the properties or proceeds thereof, in the jurisdiction of this Court, into which the funds so intrusted to said Oberlin M. Carter as a disbursing officer have been so fraudulently diverted and invested, as aforesaid, and that in due course the appointment of such receiver should be made permanent.

XI.

Forasmuch as your orators can have no adequate relief except in this Court, and to the end, therefore, that the defendants may, if they can show why your orators should not have the relief hereby prayed for, and full, true, direct and perfect answers make to the matters herein before stated and charged, but not under oath, answers under oath being hereby expressly waived, your orators pray as follows:

(1) That this Court will forthwith appoint a temporary receiver to take charge of the aforesaid property within the jurisdiction of this Court as hereinbefore set forth until a hearing can be had on rule nisi to be issued in this cause.

(2) That in due course such receiver shall be appointed pendente lite.

(3) That the Court will in due course by its final decree declare all of the aforesaid investments within the jurisdiction of the Court, into which the funds so intrusted to said Oberlin M. Carter as disbursing officer and so fraudulently diverted to his own use as aforesaid, in the hands of the defendants and of all persons holding the same for the benefit of said Oberlin M. Carter, or taking the same with notice of the fraud, are properties held in trust for orators and will decree a delivery of the same or proceeds thereof to your orators or a conveyance of the same to your orators, on a sale of the same and the delivery of the proceeds to your orators as the nature of the case and justice may require.

(4) That the Court will decree a cancellation of said power of attorney given by said Oberlin M. Carter to said I. Stanton Carter.

(5) That the Court will grant a restraining order and injunction in due course restraining any and all parties to this suit their agents and attorneys from in any manner conveying away, disposing of or incumbering pendente lite any of the properties described on Exhibit E to this bill, or the re-investments thereof.

(7) That whenever other and additional persons within the jurisdiction of this Court shall become known holding with notice of the fraud any of said properties into which said fund so intrusted to said Oberlin M. Carter as disbursing officer has so fraudulently been diverted, and the details of the concealment of said properties shall have been sufficiently

developed, that your orators may be allowed to make them parties hereto by suitable amendment with apt allegations and prayers.

(8) May it please your Honors to grant unto your orators the Court's most gracious writ of subpoena, directed to the said Oberlin M. Carter, at present residing in the Penitentiary at Fort Leavenworth, in the State of Kansas, to the said Lorenzo D. Carter, residing at Oakland, Coles County, Illinois, to the said I. Stanton Carter, residing at Chicago, Illinois, and N. W. Harris and Company, residing at Chicago. Illinois.

(9) Inasmuch as the defendants Oberlin M. Carter, and Lorenzo D. Carter, are not to be found in the territorial jurisdiction of this Court. Your orators pray that the Court will make a suitable order for service upon them by publication in accordance with the statute in such case made and provided.

(10) May it please your Honors to grant unto your orators such other and further relief as the nature of their case may require and to the Court may seem meet and appropriate.

(11) Your orators on the 30th day of July, 1901, filed in the Circuit Court of the United States for the Southern District of New York a bill of complaint of a similar tenor and effect to this bill, against the said Oberlin M. Carter, Lorenzo D. Carter, I. Stanton Carter, The American Mortgage Company of New York and others, seeking to subject to like equities the properties in that jurisdiction constituting the investments made by said Oberlin M. Carter of the funds intrusted to him as a disbursing officer which bill is now pending, and a temporary receiver has been appointed by that court to take charge and preserve said properties until the further order of the court.

Your orators pray that this bill be taken as auxiliary to said bill so pending in New York as aforesaid.

MARION ERWIN,
Special Assistant Attorney General
Solicitor for Complainant.

S. H. BETHEA,
U. S. Atty., Of Counsel.

United States of America,
Northern District of Illinois. } ss.

On this 27th day of August, 1901, before the undersigned personally comes Edward I. Johnson, who being duly sworn, deposes and says that he is a bank examiner by profession that he has for two years and over been engaged under employment by the United States in working out through the accounts and documents in the Engineer's office for the Savannah District, and the accounts of Oberlin M. Carter, Benjamin D. Greene, John F. Gaynor, R. F. Westcott and others, in the banks and brokers' offices in New York and elsewhere, the details of the frauds set forth in the foregoing bill; that he has read the testimony of the witnesses in the court Martial proceedings therein referred to, and in the proceedings for removal of Benjamin D. Greene et al., therein referred to, and he has read the said bill and is familiar with the facts set forth in said bill, and that the facts therein stated are true to the best of his knownedge, information and belief.

EDWARD I. JOHNSON.

Subscribed and sworn to before me this 27th day of August, 1901.

S. W. BURNHAM,
Clerk.

Endorsement: Filed Aug. 27, 1901, S. W. Burnham, Clerk.

MAP(S) IS/ARE TOO LARGE TO BE FILMED

And on to-wit: the 27th day of August, 1901, in the July term, 1901, of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat, Judge presiding, there was made by the Court, the following order and entry thereof.

ORDER APPOINTING TEMPORARY RECEIVER AND RULE TO SHOW CAUSE.

The United States of America
vs.
Oberlin M. Carter *et al.*

Upon consideration of the sworn allegations of the foregoing bill, and the evidence submitted in support thereof, it is ordered by the Court:

(1) That the defendants, Oberlin M. Carter, Lorenzo D. Carter, I. Stanton Carter and N. W. Harris & Company show cause before the United States Circuit Court for the Northern District of Illinois at the United States Court Rooms in the City of Chicago at ten o'clock A. M., October 22nd, 1901, or as soon thereafter as the cause can be heard, why injunction should not issue and Receiver be appointed pendente lite prayed;

(2) It further appearing to the Court that the Defendants, Oberlin M. Carter and Lorenzo D. Carter are not to be found within the territorial jurisdiction of this court, and that there is property within this jurisdiction, the status of which it is necessary to preserve until the parties can be heard;

It is ordered by the Court, that Max H. Whitney, of Chicago be, and he is hereby, appointed temporary Receiver to take possession of such of the personal and other property into which the funds intrusted to said Oberlin M. Carter as a disbursing officer of the Government have been traced as set forth in said bill or the proceeds thereof in the hands of the said Lorenzo D. Carter and I. Stanton Carter or in the hands of any other person in the jurisdiction of this court taking the same with notice of.

MARSHAL'S RETURN ON CERTIFIED COPY OF ABOVE ORDER.

United States of America,
Northern District of Illinois. } ss.

I have served this writ within my district in the following manner to wit:

Upon N. W. Harris and Company by reading the same to and within the presence and hearing of A. W. Harris one of the co-partners doing business as N. W. Harris and Company and at the same time delivering to him a true copy thereof, this 29th day of August, 1901.

Also upon I. Stanton Carter by leaving a true copy thereof at his usual place of abode, with Minnie B. Carter, an adult person who is a member of his family at the same time informing her of the contents thereof the 29th day of August, 1901.

JOHN C. AMES,
U. S. Marshal.
By G. H. VOSS,
Deputy.

Marshal fees
2 Services 4.00
2 Miles .12
Filed Sept. 10, 1901, S. W. Burnham, Clerk.

And on to wit: the 27th day of August, 1901, in the July term 1901 of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat Judge Presiding, there was made by the Court, the following order and entry thereof.

ORDER FOR SERVICE BY PUBLICATION, ETC.

The United States of America } In Equity.
vs.
Oberlin M. Carter *et al.* } Bill, etc.

The complainants having commenced in this court a suit as above entitled to enforce a legal and equitable lien upon and claims to, and to remove incumbrances, liens and clouds upon the title to personal property within the district, more particularly described in said bill, and the defendants, Oberlin

M. Carter and Lorenzo D. Carter, not being inhabitants of or found within the said district, and not voluntarily appearing thereto.

It is ordered by the court that said above named defendants shall appear, plead, answer or demur to said bill on or before the 22nd day of October, 1901, at which time, or as soon thereafter as the case can be heard, the question of the appointment of a receiver and issue of injunction pendente lite will be heard.

Let a copy of this order be served upon the said defendants, if practicable, wherever found, and upon the person or persons in possession or charge of said property.

Let a copy of this order be published once a week for six consecutive weeks prior to the date fixed herein for the appearance of said defendants in the Chicago Legal News, newspaper, of Chicago.

RETURN OF MARSHAL ON CERTIFIED COPY OF ABOVE ORDER.

U. S. Marshal's Return.

Received this writ at Topeka, Kansas, September 21, 1901, and executed the same at Fort Leavenworth, Leavenworth County, Kansas September 23, 1901, by delivering to the within named Oberlin M. Carter, personally, a certified copy of this writ with all the endorsements thereon.

W. E. STERNE,
U. S. Marshal.
By E. A. PRESCOTT,
Deputy.

Marshal's fees:	
Travel to Ft. Leavenworth 64 mi. 6c	$3.84
Service on 1 person,	2.00
	$5.84

DOCKET ENTRY AS TO RECEIVER'S BOND.

Aug. 27, 1901, filed and entered Bond of Receiver.

And on to wit: the 28th day of August, 1901, there was issued out of the clerk's office of said Court a certain subpoena, which with the marshal's return thereon are in the words and figures following to wit:

CHANCERY SUBPOENA.

United States of America
Northern District of Illinois } ss.
Northern Division.

The United States of America To Oberlin Carter, Lorenzo D. Carter, I. Stanton Carter, N. W. Harris & Co., Greeting:

We again Command You and Every of You, That you appear before our Judges of our Circuit Court of the United States of America, for the Northern District of Illinois, at Chicago, in the Eastern Division of said District, on the first Monday in the month of October next, to answer the bill of complaint of The United States of America lately filed in the Clerk's office of said Court, in said City of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the Marshal of the Northern District of Illinois, to Execute:

Witness, the Hon. Melville W. Fuller, Chief Justice of the United States of America, at Chicago, aforesaid, this 28th day of August in the year of our Lord one thousand nine hundred and one and of our Independence the 26th year.

S. W. BURNHAM,
Clerk.

(Seal)

MEMORANDUM.

The above named defendants are notified that unless they and each of them shall enter their appearance in the Clerk's office of said Court, at Chicago, aforesaid, on or before the day to which this Writ is returnable, the complainant's bill, will be taken against them as confessed and a decree entered accordingly.

S. W. BURNHAM,
Clerk.

MARSHAL'S RETURN TO ABOVE WRIT OF SUBPOENA.

United States of America
Northern District of Illinois } ss

I have served the within writ within my District in the following manner to wit:

Upon N. W. Harris and Company by delivering a true copy thereof to A. W. Harris one of the firm of N. W. Harris & Co., this 28th day of August A. D 1901

And upon I Stanton Carter by leaving a true copy thereof at his usual place of abode with Minnie B. Carter an adult person who is a member of his family, at the same time informing her of the contents thereof, on August 28th A. D. 1901.

Oberlin Carter and Lorenzo D. Carter not found in my District.

JOHN C. AMES,
U. S. Marshal,
By ASAD UDELL,
Deputy.

Marshal's fees:

2 services	$4.00
2 Miles	.12
	$4.12

Filed Aug. 29, 1901, S. W. Burnham, Clerk.

And on to wit: the 12th day of September 1901 came Horace G. Stone, and entered his appearance in said Cause for defendants Lorenzo D. Carter and I. Stanton Carter, in words and figures following to wit:—

APPEARANCE.

United States of America
vs.
Oberlin M. Carter *et al.* } Gen. No. 25980

I hereby enter my appearance in the above entitled Cause as solicitor for Lorenzo D. Carter and I. Stanton Carter, two of the defendants.

HORACE G. STONE.

Filed Sept. 12, 1901. S. W. Burnham, Clerk .

And on to wit: the 23 day of September, 1901, came Max H. Whitney, Receiver, and filed in the clerk's office of said court, in said entitled cause a Report in the words and figures following to wit:

REPORT OF MAX H. WHITNEY OF DEMANDS MADE FOR ASSETS, AND OF THE RESPONSES MADE BY L. D. CARTER AND I. S. CARTER.

In the United States Circuit Court, Northern District of Illinois, Northern Division.

United States of America
v.
Oberlin M. Carter *et al.* } No.

To the Honorable, The Judges of said Court:—

The report of Max H. Whitney, appointed temporary receiver in the above entitled cause by order of this court of August 27th, 1901, respectfully shows unto your honors:—

1:—That on August 27th, 1901, your receiver delivered at the residence of said I. Stanton Carter, 308 North State Street, Chicago, Illinois, to the wife of said Carter, who at the same time informed your receiver that the said Carter was absent from the city of Chicago, a demand for the delivery of assets to your receiver, a copy of which demand is hereto attached and marked "Exhibit A".

2:—That on August 30th, 1901, your receiver delivered to said Lorenzo D. Carter in person, in the city of Chicago, a demand for the delivery of assets to your receiver, a copy of which demand is attached hereto and marked "Exhibit B"; upon which exhibit the said Lorenzo D. Carter on said August 30th, 1901, personally acknowledged receipt of service as appears by said exhibit.

3:—That on September 5th, 1901, your receiver caused to be mailed to said I. Stanton Carter to his address, 308 North State Street, Chicago, Illinois, and also to said Lorenzo D. Carter to his address, Oakland, Coles County, Illinois, a demand a copy of which is hereto attached and marked "Exhibit C"; and that said Lorenzo D. Carter has in person acknowledged to your receiver that the said demand was received by said Lorenzo D. Carter, through the mails.

4:—That on September 18th, 1901, your receiver delivered

in person to said I. Stanton Carter, at his residence, 308 North State Street, Chicago, Illinois, a demand, a copy of which is hereto attached and marked "Exhibit D"; and that on September 19th, 1901, your receiver delivered to said Lorenzo D. Carter at Oakland, Coles County, Illinois, a like demand and received from said Lorenzo D. Carter an acknowledgment of the receipt thereof written at the bottom of said exhibit "D" as appears from the endorsement thereon.

5:—Your receiver further reports that he has not received from either of said defendants, I. Stanton Carter or Lorenzo D. Carter, any of the assets so often demanded of them as hereinbefore set forth.

6:—Your receiver further reports that in purported response to the demands made in said exhibit "D", the said Lorenzo D. Carter in person delivered to your receiver on the 20th day of September, 1901, a writing, a copy of which is hereto attached and marked "Exhibit E"; whereupon your receiver notified said Lorenzo D. Carter that said response was not satisfactory and demanded from said Lorenzo D. Carter an itemized statement of the disposition made by him of the assets aforesaid.

7:—Your receiver further reports that on said 20th day of September, 1901, said I. Stanton Carter, through his attorney, H. G. Stone Esq., in purported response to the demands made in said exhibit "D", delivered to your receiver a writing a copy of which is hereto attached and marked "Exhibit F"; whereupon your receiver notified said attorney that said response was not satisfactory and that your receiver required an itemized statement of the disposition by the said I. Stanton Carter of the assets aforesaid.

Your receiver makes this report in order that the court may be advised in the premises and that the parties at interest may take such steps in the premises as the nature of the case may require.

MAX H. WHITNEY
Receiver as aforesaid.

Max H. Whitney makes oath and says that the foregoing instrument subscribed by him, is true.

MAX H. WHITNEY

Subscribed and sworn to before me this 23rd day of September, 1901.

S. W. BURNHAM,
Clerk.

EXHIBIT A.

Chicago, August 27, 1901.

I. Stanton Carter Esq.,
Chicago, Illinois.

Sir:—

Having been appointed receiver by the circuit court of the United States for the Northern District of Illinois in the case of United States of America vs. Oberlin M. Carter, et al., to take possession of certain securities mentioned in the bill in said cause, and of the proceeds and re-investments thereof in your hands; the same and all of the same are hereby demanded from you—and you are particularly called upon to deliver at once to me, Michigan Telephone Company bond No. 2472, and Kentucky Central Ry. Company bond No. 5119; also the proceeds or re-investment thereof of the $23,000 loan raised by mortgage October 8th, 1900, on the property on 8th Avenue, New York City; also to deliver to me all moneys, stocks, bonds and securities which are in your power, custody or control, whether in bank, bank box, safety deposit box or elsewhere, from the assets or proceeds thereof caused to be turned over to you by the said Oberlin M. Carter or for his account; to be held by me as such receiver subject to the order of the court in said cause.

Very respectfully,

MAX H. WHITNEY,
Recr. as above.

EXHIBIT B.

August 29th, 1901.

Lorenzo D. Carter Esq.,
Oakland, Coles County, Illinois.

Sir: —

Having been appointed receiver by the Circuit Court of the United States for the Northern District of Illinois in the case of the United States of America vs. Oberlin M. Carter et al., and also by the United States Circuit Court for the Southern District of Illinois in the case of United States of America vs. Oberlin M. Carter, et al., to take possession of certain securities mentioned in the respective bills in each of said causes, and of the proceeds and reinvestments thereof in your hands; the same and all of the same are hereby demanded of you—and you are particularly called upon to deliver to me at once,

Kentucky Central Ry. Company bonds Numbers 3776—3782 to 3798 both inclusive—5960, 5961 and 5964, in all 21 bonds of $1000 each; also the proceeds or reinvestment thereof of the sale by you of 10 N. Y., Lackawanna & Western Construction Mortgage 5% bonds Nos. 1171 to 1180 both inclusive; two Milwaukee Lake Shore & Western bonds Nos. 697 and 847; two Milwaukee Lake Shore & Western bonds Nos. 696 and 699; 4 Milwaukee Lake Shore & Western bonds Nos. 839, 843, 844 and 846; two Milwaukee Lake Shore & Western bonds Nos. 845 and 848; also to deliver to me all monies, stocks, bonds and securities which are in your power, custody or control, whether in bank, bank box, safety deposit box or elsewhere, from the assets or proceeds caused to be turned over to you by the said Oberlin M. Carter or for his account; to be held by me as such receiver subject to the order of the said court for the Southern District of Illinois, in said cause therein pending.

Very respectfully,

MAX H. WHITNEY,
Receiver as above.

Service acknowledged this 30th day of August, 1901.

L. D. CARTER.

EXHIBIT C.

Chicago, September 5th, 1901.

To I. Stanton Carter, Chicago, Illinois. L. D. Carter, Oakland, Coles County, Illinois, and Frank P. Blair, Borden Block, Chicago Illinois, their attorney:

Sirs:—

As receiver appointed by the U. S. Circuit Court for the Northern District of Illinois in the cause of United States of America v. Oberlin M. Carter, et al., and also as receiver appointed by the U. S. Circuit Court for the Southern District of Illinois in cause of same title; I hereby demand of you that you immediately furnish me with itemized statements of all the assets and property of every kind, nature or description belonging to said Oberlin M. Carter or described or referred in the respective bills in said suits, which were in your respective possession, custody or control at the dates of the filing of said respective bills, or have since come to your possession, custody or control.

Yours truly,

MAX H. WHITNEY,
Receiver as above.

EXHIBIT D.

In the United States Circuit Court, Northern District of Illinois, Northern Division.

United States of America
v.
Oberlin M. Carter *et al.* } No.

To I. Stanton Carter, 308 N. State St., Chicago, Illinois.
Lorenzo D. Carter, Oakland, Coles County, Illinois.
Sirs:—

As receiver appointed by the Circuit Courts for the Northern and for the Southern District of Illinois, in the case of United States of America v. Oberlin M. Carter, et al., I here make demand upon you and each of you, and renew previous demands made by me upon you, for delivery at once to me of Michigan Telephone Co. bond No. 2472 and Kentucky Central Ry. Company bond No. 5119, and the proceeds or reinvestments thereof; also the $23,000, loan raised by mortgage October 8th, 1900, on the property on 8th Avenue, New York City, mentioned in the above stated bill; also Kentucky Central Railway Company bonds No. 3776, numbers 3782 to 3798 both inclusive, numbers 5960, 5961 and 5964; also proceeds, or reinvestments thereof, of the sale of 10 N. Y. Lackawanna & Western Construction Mortgage 5% bonds numbers 1171 to 1180 both inclusive; two Milwaukee, Lake Shore & Western bonds No's 697 and 847; two Milwaukee, Lake Shore & Western bonds No's 698 and 699; 4 Milwaukee, Lake Shore & Western bonds No's 839, 843, 844, and 846; two Milwaukee, Lake Shore & Western bonds No's 845 and 848; also that you deliver to me at once all monies, stocks, bonds and securities which are in your power, custody or control, whether in bank, bank box, safety deposit box or elsewhere, from the assets or proceeds caused to be turned over to you or either of you by the said Oberlin M. Carter, or for his account; to be held by me as such receiver subject to the orders of the Court.

Unless I get a satisfactory response from you in the meantime, notice is hereby given you that on Monday, September 23rd, 1901, at the hour of 10 A. M. or as soon thereafter as counsel can be heard, I shall move before Judge Kohlsaat, or before such other Judge as may be sitting in his place and stead, in the United States Circuit Court room on the 3rd

floor of the Monadnock Block, Chicago, Illinois, for a rule against you for contempt of Court.

MAX H. WHITNEY,
Receiver as above.

Rec'd a copy of above. Sept. 19, 1901.

L. D. CARTER.

EXHIBIT E.

In the United States Circuit Court, Northern District of Illinois, Northern Division.

United States of America.
v.
Oberlin M. Carter *et al.*

To Max H. Whitney, Temporary Receiver in the above entitled cause.

Dear Sir: —

In answer to your demand made September 16th, to turn over certain property, I state as follows:—

None of the property mentioned in your demand is either in my possession or under my control, except one bond of the Michigan Telephone Company for one thousand dollars ($1000.00) and one bond of the Kentucky Central Railway Company for one thousand dollars ($1000.00). These two bonds are my individual property, purchased entirely with my own private funds, and now belong and have always belonged to me solely and individually.

The order appointing you receiver was made without notice to me and without giving me an opportunity to say to the court that these two bonds belonged to me individually. The United States has no claim whatever upon these bonds, and to compel me to deliver up these bonds to you under the circumstances would be depriving me of property without due process of law, contrary to the Constitution of the United States.

My time to answer in the above entitled cause has not expired, and I have had no sufficient opportunity to make any motion to vacate or modify the order appointing you temporary receiver so as to obtain an adjudication by the court as to whether these two bonds should be turned over to you as receiver. If, however, the court, upon consideration of this answer to your demand, requires that the said two bonds

shall be turned over to you, I will turn them over at once, but under protest that I have not had due process of law, and that I have not had an opportunity to be heard, or had my day in court.

(Signed) I. STANTON CARTER.

EXHIBIT F.

In the United States Circuit Court, Northern District of Illinois, Northern Division.

United States of America
vs.
Oberlin M. Carter, *et al.*

To Max H. Whitney, temporary receiver in the above entitled cause:

Dear Sir: In answer to your demand made September 17th, to turn over certain property, I state as follows:

None of the property mentioned in your demand is either in my possession or under my control. At one time some of that property was turned over to me under an agreement by which I was to use the property, or its proceeds in paying the expenses of the defense of Captain Oberlin M. Carter in the various proceedings brought against him by the United States, and to indemnify me against any obligation which I might incur in such matters, and to pay any expenses or obligations which I might incur in any proceedings brought by said Captain Oberlin M. Carter.

All of the property which I have ever received has been disposed of and the proceeds applied for the above purposes. Prior to commencement of this suit.

(Signed) LORENZO D. CARTER.

Endorsement: Report of Max H. Whitney, receiver, filed Sept. 23, 1901. S. W. Burnham, Clerk.

And on to-wit: the 23 day of September, 1901, came the United States by Marion Edwin, special assistant to the attorney general, and S. H. Bethea, U. S. attorney, and filed in the clerk's office of said court a motion for a rule, in the words and figures following, to-wit:

MOTION FOR RULE FOR CONTEMPT.

In the Circuit Court of the United States, for the Northern District of Illinois.

United States of America *vs.* Oberlin M. Carter, *et al.* } In Equity. Bill, Etc. Motion for Rule.

And now comes the United States of America by Marion Erwin, special assistant attorney general, and by S. H. Bethea, United States attorney, and moves the court for a rule against Lorenzo D. Carter and I. Stanton Carter, defendants in the above stated cause, requiring them to forthwith make an accounting to the receiver appointed by the court in this cause for the assets which have come into their hands from the properties of Oberlin M. Carter, or claimed by him, and the income thereof, and re-investments thereof, and requiring said defendants to forthwith deliver such properties in their power, custody or control, or the proceeds or re-investments thereof to the receiver; and in default thereof that said Lorenzo D. Carter and I. Stanton Carter be required to show cause at an early day why they should not be adjudged in contempt of the court.

In support of this motion moveants refer (1) to the sworn allegations of the bill of this cause. (2) The report of the receiver appointed by the court this day filed in this cause, and to the evasive answers made by the said defendants to the demands of said receiver, for such accounting and for such assets, copies of which demands and answers are attached to said receiver's report. (3) To the affidavits now to the court shown. (4) To the order of the court appointing the receiver in this cause.

MARION ERWIN,
Special Assistant Attorney General.
S. H. BETHEA,
U. S. Attorney.

Filed Sept. 23, 1901. S. W. Burnham, Clerk.

And on to-wit: the 23rd day of September, 1901, in the July term, 1901, of said court, in the record of proceedings thereof, in said entitled cause before the Honorable Christian C. Kohlsaat, judge presiding, there was made by the court, the following order and entry thereof.

ORDER TO DELIVER ASSETS OR SHOW CAUSE FOR CONTEMPT.

United States of America
vs.
Oberlin M. Carter, *et al.*
} In Equity. Bill, Etc. Rule.

Upon consideration of the motion of the United States of America made by Marion Erwin, special assistant attorney general, and by S. H. Bethea, United States attorney, and of the evidence submitted in support thereof. And the defendants, L. D. Carter and I. Stanton Carter, appearing by H. G. Stone, their solicitor of record.

It is ordered by the court that Lorenzo D. Carter and I. Stanton Carter, defendants in the above stated cause, do forthwith make an accounting to the receiver appointed by the court in this cause for the assets which have come into their hands from the properties of Oberlin M. Carter or claimed by him and the income thereof, and re-investments thereof, and forthwith deliver such properties in their power, custody or control, and the proceeds thereof, or re-investments thereof, to the receiver. And in default thereof the said Lorenzo D. Carter and I. Stanton Carter, be required to show cause before the said Circuit Court of the United States at the United States court rooms in the City of Chicago, on October 22nd, 1901, at 10 o'clock a. m. why they should not be punished for a contempt of court for any disobedience to this order.

The said defendants shall file their answers to this rule on said 22nd day of October, 1901, and the matter shall stand for trial as soon thereafter as the same can be heard, or upon such day as the parties may agree upon with the approval of the court.

And on to-wit: the 9th day of October, 1901, came Frank P. Blair, and entered his appearance in said cause for defendant, Oberlin M. Carter, in words and figures following, to-wit:

APPEARANCE.

United States of America
vs.
Oberlin M. Carter, *et al.* } Gen. No. 25980.

I hereby enter my appearance as attorney for the defendant, O. M. Carter, in the above entitled cause.

FRANK P. BLAIR.

Filed Oct. 9, 1901. S. W. Burnham, Clerk.

And on to-wit: the 21st day of October, 1901, came the defendant, Oberlin M. Carter, by Frank P. Blair and Horace G. Stone, his solicitors, and filed in the clerk's office of said court a demurrer to the bill of complaint in said entitled cause in the words and figures following, to-wit:

DEMURRER OF O. M. CARTER TO BILL.

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

United States of America,
Complainant,
against
Oberlin M. Carter, *et al.,*
Defendants. } In Equity.

The demurrer of Oberlin M. Carter, one of the defendants, to the bill of complaint of the United States of America, the above named complainant.

This defendant, by protestation not confessing any or all of the matters and things in the complainant's bill of complaint contained to be true in such manner and form as the same is therein set forth and alleged, doth demur to the said bill, and for cause of demurrer, showeth:

First: That the complainant hath not in and for its said bill made or stated such a case as entitles it in a court of equity to any relief against this defendant, and the said bill contains no matter of equity whereon this court can grant any decree in favor of the complainant, or give any relief whatever as to the matters contained in said bill or in any of such matters.

Second: That if the said complainant be entitled to any relief against this defendant on account of the matters and things set forth in the said bill of complaint, it has a plain and adequate remedy at law.

Third: That the complainant hath not in the said bill made or stated any cause entitling it to any relief against this defendant by way of injunction or receiver because the bill states that the complainant is out of possession of the real estate therein described and by the prayer of said bill attempts to recover possession of said real estate. The question herein involved is a dispute about the title to real estate, and the complainant has a full, adequate and complete remedy at law.

Fourth: That the complainant hath not in the said bill made or stated any cause entitling it to any relief in this court against this defendant because the allegations of the bill show that the complainant asserts a legal title to real estate, and it cannot invoke the jurisdiction of this court in equity as against persons in possession claiming adversely but must resort to an action of ejectment, and the circumstance that the complainant seeks at the same time relief in the nature of removing clouds upon the title does not authorize the intervention of equity.

Fifth: The discovery sought by said bill is in aid of a criminal suit.

Sixth: That the said bill of complaint against this defendant, and the several other defendants, contains separate and distinct and independent matters and causes which have no relation to each other and which do not effect all of the parties defendant in said bill, and if the complainant is entitled to any relief by reason of said matters alleged it should have sued at law upon the said several causes, and the said several matters and causes have been improperly united and the said bill of complaint herein is altogether multifarious.

Wherefore; and for divers other good causes of demurrer appearing in the said bill this defendant doth demur thereto and humbly demands the judgment of this honorable court whether he shall be compelled to make any further or other answer to said bill and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

FRANK P. BLAIR,
Solicitor for Defendant.

HORACE G. STONE,
Of Counsel for Defendant.

I hereby certify that the foregoing demurrer is in my opinion well founded in point of law, and proper to be filed in the above case.

HORACE G. STONE,
Of Counsel for Defendant.

State of Kansas,
County of Leavenworth. } ss.

Oberlin M. Carter, being duly sworn, deposes and says:
I am one of the above named defendants. The foregoing demurrer is not interposed to delay the cause or any proceeding therin.

OBERLIN M. CARTER.

Sworn to before me this 19th day of October, 1901.

JOHN C. RIPLEY,
Notary Public.

My Com. expires Sept. 1st, 1904.

Endorsement: Demurrer of Oberlin M. Carter, filed Oct. 21, 1901. S. W. Burnham, Clerk.

And on to-wit: the 21st day of October, 1901, came the defendant, Lorenzo D. Carter, by Horace G. Stone and W. W. Gurley, his solicitors, and filed in the clerk's office of said court, a demurrer to the bill of complaint, in said entitled cause, in the words and figures following, to-wit:

DEMURRER OF L. D. CARTER TO BILL.

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

United States of America,
Complainant.
against
Oberlin M. Carter, *et al.*,
Defendants.
} In Equity.

The demurrer of Lorenzo D. Carter, one of the defendants to the bill of complaint of the United States of America, the above named complainant.

This defendant, by protestation not confessing any or all

of the matters and things in the complainant's bill of complaint contained to be true in such manner and form as the same is therein set forth and alleged, doth demur to the said bill, and for cause of demurrer showeth:

First: That the complainant hath not in and for its said bill made or stated such a case as entitles it in a court of equity to any relief against this defendant, and the said bill contains no matter of equity whereon this court can grant any decree in favor of the complainant, or give any relief whatever as to the matters contained in said bill or in any of such matters.

Second: That if the said complainant be entitled to any relief against this defendant on account of the matters and things set forth in the said bill of complaint, it has a plain and adequate remedy at law.

Third: That the complainant hath not in the said bill made or stated any cause entitling it to any relief against this defendant by way of injunction or receiver because the bill states that the complainant is out of possession of the real estate therein described and by the prayer of said bill attempts to recover possession of said real estate. The question herein involved is a dispute about the title to real estate, and the complainant has a full, adequate and complete remedy at law.

Fourth: That the complainant hath not in the said bill made or stated any cause entitling it to any relief in this court against this defendant because the allegations of the bill show that the complainant asserts a legal title to real estate, and it cannot invoke the jurisdiction of this court in equity as against persons in possession claiming adversely but must resort to an action of ejectment, and the circumstance that the complainant seeks at the same time relief in the nature of removing clouds upon the title does not authorize the intervention of equity.

Fifth: The discovery sought by said bill is in aid of a criminal suit.

Sixth: That the said bill of complaint against this defendant, and the several other defendants, contains separate and distinct and independent matters and causes which have no relation to each other and which do not effect all of the parties defendant in said bill, and if the complainant is entitled to any relief by reason of said matters alleged it should have sued at law upon the said several causes, and the said sev-

eral matters and causes have been improperly united and the said bill of complaint herein is altogether multifarious.

Wherefore, and for divers other good causes of demurrer appearing in the said bill this defendant doth demur thereto and humbly demands the judgment of this honorable court whether he shall be compelled to make any further or other answer to said bill and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

HORACE G. STONE,
Solicitor for Defendant.

W. W. GURLEY,
Of Counsel for Defendant.

I hereby certify that the following demurrer is in my opinion well founded in point of law, and proper to be filed in the above case.

W. W. GURLEY,
Of Counsel for Defendant.

State of Illinois, } ss.
County of Coles. }

Lorenzo D. Carter, being duly sworn, deposes and says: I am one of the above named defendants. The foregoing demurrer is not interposed to delay the cause or any proceeding therein.

LORENZO D. CARTER.

Sworn to before me this 19th day of October, 1901.

FRANK C. WINKLER,
Notary Public.

Endorsement: Demurrer of Lorenzo D. Carter filed Oct. 21, 1901. S. W. Burnham, Clerk.

And on to-wit: the 21st day of October, 1901, came the defendant, I. Stanton Carter, by Horace G. Stone and W. W. Gurley, his solicitors, and filed in the clerk's office of said court, a demurrer to the bill of complaint in said entitled cause in the words and figures following, to-wit:

DEMURRER OF I. STANTON CARTER TO BILL.

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

United States of America,
Complainant,
against
Oberlin M. Carter, *et al.*,
Defendants.
} In Equity.

The demurrer of I. Stanton Carter, one of the defendants to the bill of complaint of the United States of America, the above named complainant.

This defendant, by protestation not confessing any or all of the matters and things in the complainant's bill of complaint contained to be true in such manner and form as the same is therein set forth and alleged, doth demur to the said bill and for cause of demurrer, showeth:

First: That the complainant hath not in and for its said bill made or stated such case as entitles it in a court of equity to any relief against this defendant, and the said bill contains no matter of equity whereon this court can grant any decree in favor of the complainant, or give relief whatever as to the matter contained in said bill or in any of such matters.

Second: That if the said complainant be entitled to any relief against this defendant on account of the matters and things set forth in the said bill of complaint, it has a plain and adequate remedy at law.

Third: That the complainant hath not in the said bill made or stated any cause entitling it to any relief against this defendant by way of injunction or receiver because the bill states that the complainant is out of possession of the real estate therein described and by the prayer of said bill attempts to recover possession of said real estate. The question herein involved is a dispute about title to real estate, and the complainant has a full, adequate and complete remedy at law.

Fourth: That the complainant hath not in the said bill made or stated any cause entitling it to any relief in this court against this defendant because the allegations of the bill show that the complainant asserts a legal title to real estate, and it cannot invoke the jurisdiction of this court in equity as against persons in possession claiming adversely but must resort to

an action of ejectment, and the circumstance that the complainant seeks at the same time relief in the nature of removing clouds upon the title does not authorize the intervention of equity

Fifth: The discovery sought by said bill is in aid of a criminal suit.

Sixth: That the said bill of complaint against this defendant, and the several other defendants, contains separate and distinct and independent matters and causes which have no relation to each other and which do not effect all of the parties defendant in said bill, and if the complainant is entitled to any relief by reason of said matters alleged it should have sued at law upon the said several causes, and the said several matters and causes have been improperly united and the said bill of complaint herein is altogether multifarious.

WHEREFORE, and for divers other good causes of demurrer appearing in the said bill this defendant doth demur thereto and humbly demands the judgment of this honorable court whether he shall be compelled to make any further or other answer to said bill and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

HORACE G. STONE,
Solicitor for Defendant.

W. W. GURLEY,
Of Counsel for Defendant.

I hereby certify that the foregoing demurrer is in my opinion well founded in point of law, and proper to be filed in the above case.

W. W. GURLEY,
Of Counsel for Defendant.

State of Illinois } ss
County of Cook }

I. Stanton Carter, being duly sworn, deposes and says:

I am one of the above named defendants. The foregoing demurrer is not interposed to delay the cause or any proceeding therein.

I. STANTON CARTER.

Sworn to before me this 21st day of October, 1901.

OLIVER A. MERTZ,
Notary Public.

Endorsement Demurrer of I. Stanton Carter to bill, filed Oct 21, 1901 S. W. Burnham Clerk.

And on towit: the 21st day of October 1901 came the defendant Oberlin M. Carter, and filed in the clerk's office of said court his answer to the rule to show cause why a receiver should not be appointed pendente lite, in the words and figures following towit:

ANSWER OF O. M. CARTER TO RULE TO SHOW CAUSE FOR APPOINTMENT OF RECEIVER.

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

United States of America
v
Oberlin M. Carter, *et al.* } In Equity.

The defendant, Oberlin M. Carter, in answer to the order in the above entitled cause to show cause why a receiver should not be appointed and an injunction issued, states as follows:

(1) At the time of the filing of the bill herein, the complainant applied ex parte and obtained an order appointing a temporary receiver herein, and said receiver has qualified and has taken possession of all the property of this defendant which he could find.

(2) The bill of complaint in the above entitled cause is only verified on information and belief, and it is contrary to the practice of this court to appoint a receiver or issue an injunction on a bill so verified, especially as in this case where there are no original exhibits which proved any allegations of the bill, but all the exhibits are either alleged photographs of materials or work or are unintelligible and unusual charts or diagrams giving the opinions as to certain facts of the person who verified the bill on information and belief. Furthermore the information and belief of the person verifying the bill is based upon a reading of testimony taken before the court martial, and the reading of testimony taken since that time in the application for a requisition for John F. Gaynor, et al. This defendant is advised that none of the testimony used in the court martial proceedings can be used in this cause for the reason that testimony in court martial proceedings is not taken in the same way, or subject to the same rules, as testimony taken

in suits in equity. With regard to the testimony taken in the application for requisition for John F. Gaynor, et al., this defendant was not a party to that application and was not represented therein and had no opportunity to cross-examine witnesses who testified therein, and hence the testimony taken in that case is not admissible against this defendant in this case.

This defendant is informed that the person verifying said bill of complaint based his verification largely upon the testimony of one Robert F. Westcott, and upon books of account of said Westcott and of certain banks and of other persons either taken in said requisition case, or examined by the person verifying the bill, and that said person so verifying the bill had no personal knowledge of any fact with regard to this case, but that his information and belief is solely a matter of opinion on his part based upon testimony etc. which he has heard given or read, and hence he is not entitled to determine what said evidence means or shows, and make affidavit thereto, but the same is a matter for the determination of this court, and hence his verification of this bill is of no weight whatever.

(3) It is admitted in said bill that in the proceedings before the court martial it was not shown that this defendant ever received any money whatever which ever belonged to the United States, either directly or indirectly, but that the court martial acted solely upon the alleged evidence of conspiring to assist the contractors, and upon the failure of this defendant to show where he received all the money of which he was ever the owner or possessor.

(4) This defendant is advised that upon the face of said bill the complainant has shown no equity and is not entitled to recover, and this defendant has demurred to said bill on that and other grounds, and pending the determination of said demurrer this defendant submits that no receiver ought to be appointed or injunction issued.

(5) There is no claim on the part of the complainant that it has ever obtained any judgment against this defendant, or that it has ever made any effort to do so, but that the sole object of said bill seems to be to obtain the property of this defendant without ever obtaining any judgment against him, as is shown by the fact that no special relief is asked against this defendant, but the special relief prayed for is that the property of this defendant be decreed to be-

long to the complainant without regard to whether the complainant has any claim against this defendant therefor.

(6) This defendant states that his only connection with the complainant was that of Captain of Engineers in the United States Army, and that as such captain he acted as the agent of the United States in carrying on certain work referred to in said bill. That as such agent his duties are defined by law and he is only liable for fair good faith and fair diligence in performing his duties, and that in the performance of all of said duties he exercised entire good faith and all of the diligence and ability which he possessed, and if, notwithstanding, the complainant has been damaged, this defendant is not to be blamed therefor and is not pecuniarily liable therefor.

(7) This defendant states that he never received from the contractors or from anybody else, either directly or indirectly, any money or property referred to in said bill of complaint which ever belonged to the United States in any way, shape or manner. That he never received any reward, gratuity, benefit or advantage from said contractors, or from any of the same. That he never conspired with said contractors, or with any of the same, with regard to any of the matters referred to in said bill, or with regard to anything else. That he is advised by counsel that the court martial sentence was not based upon the receipt by him of any money belonging to the United States, but was based upon a statute of the United States which makes an officer liable for embezzlement in case he pays out money to a third person by mistake, or where a third person is not entitled to the same. That the money that he paid to said contractors he paid under contracts made with them by his superior officer for materials furnished and labor done exactly in accordance with said contracts. That he never favored said contractors, but in all his work required the performance of each and every contract and every part thereof as he thought was for the best interests of the complainant. That the money and property which he now has belongs to him personally, and the United States never had any interest in said money or property, and never had any interest in any money or property, of which the said money or property is partly or wholly the proceeds. This defendant states that he either paid out for the benefit of the United States, or returned to the United States all the money which he ever received from or on account of the United States, and that he accounted to

the United States, so far as he knows, for all the property of the United States which was ever in his hands, and that after having paid out the moneys referred to in said bill of complaint in connection with work done by and under him as an engineering officer of the United States, he never received any of the same back again directly or indirectly.

OBERLIN M. CARTER.

State of Kansas
County of Leavenworth } ss

Oberlin M. Carter, being first duly sworn on oath deposes and says that the foregoing answer is true in substance and in fact, except as to those matters therein stated to be on information, and as to those matters he believes the same to be true.

OBERLIN M. CARTER.

Subscribed and sworn to before me this 19th day of October, A. D., 1901.

JOHN C. RIPLEY,
Notary Public.

My Com. expires Sep. 1st, 1904.

Endorsement Answer of O M Carter to rule to show cause Filed Oct 21, 1901 S. W. Burnham Clerk.

And on towit: the 21st day of October 1901 came the defendant Lorenzo D. Carter. and filed in the clerk's office of said Court his answer to the rule to show cause why a receiver should not be appointed pendente lite, in the words and figures following towit:—

ANSWER OF L. D. CARTER TO RULE TO SHOW CAUSE FOR APPOINTMENT OF RECEIVER.

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

United States of America
v.
Oberlin M. Carter *et al.* } In Equity.

The defendant Lorenzo D. Carter, in answer to the order in the above entitled cause entered August 27th, 1901, to

show cause why a receiver should not be appointed and injunction issue, hereby adopts as his answer to said order the answer made and filed in the above entitled cause to the same order by Oberlin M. Carter.

LORENZO D. CARTER

Endorsement Answer of Lorenzo D Carter to order of August 7, 1901 to show cause. Filed Oct 21, 1901 S. W. Burnham Clerk.

And on towit: the 21st day of October 1901, came the defendant I. Stanton Carter, and filed in the clerk's office of said court his answer to the rule to show cause why a receiver should not be appointed pendente lite, in the words and figures following towit:

ANSWER OF I. STANTON CARTER TO RULE TO SHOW CAUSE FOR APPOINTMENT OF RECEIVER.

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

United States of America
v.
Oberlin M. Carter *et al.* } In Equity.

The defendant I. Stanton Carter, in answer to the order in the above entitled cause entered August 27th, 1901, to show cause why a receiver should not be appointed and injunction issue, hereby adopts as his answer to said order the answer made and filed in the above entitled cause to the same order by Oberlin M. Carter.

I. STANTON CARTER.

Endorsement Answer of I Stanton Carter to order of August 27, 1901 to show cause. Filed Oct 21, 1901 S W Burnham Clerk.

And towit: on the 21st day of October 1901 came the defendant Lorenzo D. Carter, and filed in the clerk's office of said court his answer to the rule to show cause why he should not be punished for contempt, in the words and figures following towit:

ANSWER OF L. D. CARTER TO RULE TO SHOW CAUSE, ON CONTEMPT.

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

United States of America
v.
Oberlin M. Carter *et al.*
} In Equity.

The defendant, Lorenzo D. Carter, in answer to the order in the above entitled cause to show why he should not be attached for contempt of court for not making an accounting to the receiver appointed by the court for the assets which have come into his hands from the properties of Oberlin M. Carter, or the proceeds thereof, states as follows:

(1) This defendant is advised that the order appointing a temporary receiver in this case did not require this defendant to make any accounting to said receiver, but required this defendant to turn over to said receiver any property which he might have in his hands mentioned in said bill belonging to the defendant Oberlin M. Carter. That in answer to the demand made by said receiver for said property, he answered in writing that he had no property in his possession or under his control as that mentioned or described in said bill, and hence was unable to turn over any such property. That at one time he did receive some property from said Oberlin M. Carter for the purpose of using and paying out the same for the expenses and attorneys' fees in the various suits in which said Oberlin M. Carter was interested, and that he had in fact paid out and used all of said property for such purposes prior to the filing of the bill herein and had nothing remaining in his hands.

(2) This defendant is advised that the bill filed in this case is by its terms a bill to recover property which the bill alleges was embezzled by Oberlin M. Carter, and which this defendant and others conspired with said Oberlin M. Carter to conceal, or in other words, the said bill charges this defendant with conspiring to receive and conceal stolen property, and this defendant is advised he is not bound to furnish any evidence against himself in any such a proceeding, and that he is not bound to answer any questions or produce any evidence which might tend to criminate him, and if this defendant was guilty of receiving stolen property as alleged

in said bill he is not bound to answer any questions or make any accounting as to what he did receive, because such evidence would tend to criminate him.

(3) If the court shall be of opinion that the bill filed against this defendant is not a bill charging him with conspiracy to receive and conceal stolen property, then this defendant is advised it is a bill for an accounting, and that he has by law a certain length of time in which to plead, answer or demur to said bill, which time has not yet expired. That he is entitled to test the sufficiency of said bill by demurrer before he is called upon to make any accounting, and he has made and filed his demurrer to said bill, and until said demurrer is disposed of he submits that he is not bound to make any accounting.

(4) This defendant is advised that the complainant has no judgment at law against Oberlin M. Carter and that it cannot pursue proceedings supplementary to execution until it obtains a judgment against said Oberlin M. Carter, which it has not done.

(5) This defendant never had any notice or knowledge, or even suspicion, that any property that he may have received from, or belonging to said Oberlin M. Carter, was ever embezzled or was the proceeds of any property ever embezzled, or was ever wrongfully obtained from said complainant, or was the proceeds of any property ever wrongfully obtained from said complainant, and he states that in all his transactions whatever they may have been, he acted in entire good faith and in the full belief that he had a legal right to do whatever he has done.

This defendant is aware of the fact that certain persons representing the complainant have extensively advertised in the newspapers the proceedings which they have carried on against said Oberlin M. Carter, and have extensively advertised in the newspapers their side of the case and their opinion that the said Oberlin M. Carter was guilty of various wrongful acts, but this defendant has never seen the slightest evidence of any wrongful acts on the part of the said Oberlin M. Carter, and has never had any reason to believe or suspect that the said Oberlin M. Carter ever committed any wrongful acts whatever, and this defendant submits that the various interviews published in the newspapers and the various other things published in the newspapers, even though this defendant may have read a small fraction of the same, were not notice to this defendant of any wrongdoing

on the part of the said Oberlin M. Carter, and were not in effect a lis pendens preventing this defendant from doing any further business for said Oberlin M. Carter except at his own peril. That the first civil suit ever brought against said Oberlin M. Carter by the complainant was commenced on the 30th day of July, 1901, and this defendant submits that he is not affected by the alleged multitude of interviews, etc., published in the newspapers with regard to the said Oberlin M. Carter.

(6) This defendant again states that he has no money or property in his hands, or under his control belonging to Oberlin M. Carter, or to the complainant, or mentioned or described in said bill of complaint.

(7) This defendant refers to the answer of Oberlin M. Carter to the rule upon him to show cause why a receiver should not be appointed and an injunction issue.

(8) This defendant, therefore, submits that the rule upon him should be vacated and discharged and he be permitted to defend in this case in the usual course of practice.

LORENZO D. CARTER.

Endorsement Answer of Lorenzo D. Carter to order to show cause. Filed Oct 21, 1901 S. W. Burnham Clerk.

And towit: on the 21st day of October 1901, came the defendant I Stanton Carter, and filed in the clerk's office of said court his answer to the rule to show cause why he should not be punished for contempt, in the words and figures following towit:

ANSWER OF I. STANTON CARTER TO RULE TO SHOW CAUSE, ON CONTEMPT.

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

United States of America
v.
Oberlin M. Carter *et al.* } In Equity.

The defendant, I. Stanton Carter, in answer to the order in the above entitled cause to show cause why he should not be attached for contempt of court in not making an accounting to the receiver appointed by the court for the assets

which have come into his hands from the properties of Oberlin M. Carter, or the proceeds thereof, states as follows:

(1) This defendant is advised that the order appointing a temporary receiver in this case does not require this defendant to make any accounting to said receiver, but required this defendant to turn over to said receiver any property which he might have in his hands, mentioned in said bill, belonging to the defendant Oberlin M. Carter. That in answer to the demands made by said receiver for said property he answered in writing that he had no such property in his possession or under his control except two bonds which were his personal property, and as to those he expressed his willingness to turn the same over to the court if the court upon due consideration of his answer and the facts should order him to do so, and he, therefore, asks the judgment of the court as to whether upon his answer to the receiver's demand and upon the bill he should turn over said two bonds.

(2) This defendant is advised that the bill filed in this case is by its terms a bill to recover property which the bill alleges was embezzled by Oberlin M. Carter, and which this defendant and others conspired with said Oberlin M. Carter to conceal, or in other words, the said bill charges this defendant with conspiring to receive and conceal stolen property, and this defendant is advised he is not bound to furnish any evidence against himself in such a proceeding, and that he is not bound to answer any questions or produce any evidence which might tend to criminate him, and if this defendant was guilty of receiving stolen property as alleged in said bill he is not bound to answer any question or make any accounting as to what he did receive, because such evidence would tend to criminate him.

(3) If the court shall be of opinion that the bill filed against this defendant is not a bill charging him with conspiracy to receive and conceal stolen property, then this defendant is advised it is a bill for an accounting, and that he has by law a certain length of time in which to plead, answer or demur to said bill, which time has not yet expired. That he is entitled to test the efficiency of said bill by demurrer before he is called upon to make any accounting, and he has made and filed his demurrer to said bill, and until said demurrer is disposed of he submits that he is not bound to make any accounting.

(4) This defendant is advised that the complainant has no judgment at law against Oberlin M. Carter and that it

cannot pursue proceedings supplementary to execution until it obtains a judgment against said Oberlin M. Carter, which it has not done.

(5) This defendant never had any notice or knowledge, or even suspicion that any property that he may have received from, or belonging to said Oberlin M. Carter, was ever embezzled, or was the proceeds of any property ever embezzled, or was ever wrongfully obtained from said complainant, or was the proceeds of any property ever wrongfully obtained from said complainant, and he states that in all his transactions whatever they may have been, he acted in entire good faith and in the full belief that he had a legal right to do whatever he has done.

(6) This defendant again states that he has no money or property in his hands or under his control belonging to Oberlin M. Carter or to the complainant mentioned or described in said bill of complaint, except said two bonds aforesaid, which property is his own individual property.

This defendant, therefore, submits that the rule upon him should be vacated and discharged and he be permitted to defend in this case in the usual course of practice.

I. STANTON CARTER.

Endorsement Answer of I. Stanton Carter to order to show cause, filed Oct 21, 1901 S W Burnham Clerk.

And on towit: the 28th day of October 1901 in the July term 1901 of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat Judge presiding, there was made by the Court, the following order and entry thereof.

STIPULATION AND ORDER CONTINUING RECEIVER.

United States of America
v.
O. M. Carter *et al.* } In Equity.

It Is Agreed between the parties to the above entitled cause, that:

The hearing of the question as to the appointment of receiver pendente lite is adjourned to a day to be fixed by the giving of a ten days notice of such hearing by either party

to the other, the original appointment of a receiver until hearing to continue until such hearing and decision thereon, and that this agreement be submitted for approval of the court. But such postponement shall not affect the right of the complainant, or of the receiver, to take any legal steps or press any legal proceeding in the meantime to obtain possession of any of the assets claimed to belong to the alleged trust fund, and is not to affect the right of the defendants to resist the same on any other ground than the fact that there has been no hearing on the appointment of a receiver.

MARION ERWIN
Sp. Asst. Attorney General,
Solicitor for Complainant.
HORACE G STONE
Solicitor for Defendants O. M., L. D., & I. S. Carter.

The above agreement is approved and made an order of the court.

And on towit: Monday the 28th day of October 1901 in the July term 1901 of said court came the complainant and moved before the Hon. Christian C. Kohlsaat Judge presiding for the appointment of a master for certain purposes, and thereupon the following entry was made and entered upon the dockets of the said Court:

HEARING ON MOTION FOR REFERENCE TO MASTER POSTPONED.

United States
vs.
O. M. Carter *et al.*

Motion of complainant for reference to master postponed to Wednesday A. M.

And on towit: the 6th day of November 1901 in the July term 1901 of said Court, in the record of proceedings thereof, in said entitled cause before the Honorable Christian C. Kohlsaat Judge presiding, came the parties by their Solicitors of record, and filed in said cause a stipulation which with the order of the court made and entered thereon, are in the words and figures following towit:

STIPULATION OF NOVEMBER 6th, 1901.

United States of America } ss.

United States of America
v.
Oberlin M. Carter *et al.* } In Equity.

Pending on bill and auxiliary bills in the Circuit Courts for the Southern District of New York, District of New Jersey, Southern District of Georgia, Southern District of West Virginia, Northern District of Illinois and Southern District of Illinois.

AGREEMENT

It is agreed between the United States, complainants, and Oberlin M. Carter, I. Stanton Carter and Lorenzo D. Carter, defendants in the above entitled cause, as follows:

(1) The issue as between the United States and Oberlin M. Carter as to the fraudulent diversion of funds, intrusted to him as disbursing officer, into the assets as charged in complainant's bills pending in the several districts, shall be brought to final decree first in the Circuit Court of the United States for the Northern District of Illinois, and the final decree of that Court, unless reversed by the appropriate appellate court on appeal shall be conclusive on all questions determined therein, and shall be made effective by appropriate decrees on the bills in the other districts if deemed necessary by either party.

But this clause shall not be construed to operate to the prejudice or delay of the Government in any proceeding against other parties for accounting in districts other than the Northern District of Illinois, who may be claiming for themselves any part of said assets.

(2) That as to the assets claimed by the Government as assets into which it charges the funds intrusted to Oberlin M. Carter as disbursing officer was diverted, with the proceeds, income and re-investments thereof where the form of the investments have been changed, and which assets have or may be hereafter traced into the possession, custody or control of said defendants, and have not heretofore been *bona fide* disposed of by them and therefore beyond their control, shall be forthwith by the said defendants turned over to the receiver appointed in this cause. But the court will determine whether the one Kentucky Central bond and one Michigan Telephone bond charged in the bill to be re-investments of said alleged trust fund, and which bonds are claimed by I. Stanton Carter, should be held by the receiver pending the litigation.

(3) The said defendants shall waive their privilege and give all the information they can with regard to what property has been disposed of and its disposition, but no evidence which may be given by the said Carters in this case shall ever be used against them in any criminal proceedings, unless on a charge of perjury committed in this case. And nothing in this agreement shall be construed as affecting the right of the Government if any it has to recover any part of said assets disposed of by the said defendants and not turned over to the receiver.

(4) L. D. Carter and I. Stanton Carter will forthwith dismiss their demurrers and file answers disclaiming any personal interest in the aforesaid assets in controversy in this litigation, including the real estate on 8th Avenue, New York, and at Orange, New Jersey, except as to the two bonds claimed by I. S. Carter as above.

(5) Oberlin M. Carter shall dismiss all demurrers and exceptions and shall file promptly his answers to the bills and amended bills pending in said several districts.

(6) All private books, papers, etc., of Oberlin M. Carter turned over to the Court Martial shall be subject to the inspection of the counsel for said Carter, and his chief counsel shall have the right to have made at the expense of the fund turned into court, a copy of any documentary evidence which has ever been used or referred to as evidence in the Court Martial or Greene-Gaynor proceeding, or in this proceeding.

(7) From said fund to be accounted for to the receiver the sum of $5,000.00 shall be left in the hands of H. G. Stone,

chief counsel of said Oberlin M. Carter, from which to compensate and cover the expense of employment of local counsel in any of the districts in which local counsel have been or may be employed in any branch of this case.

(8) From said fund to be accounted for to the receiver, there shall be paid:

(a) The fees, traveling expenses and other expenses of Oberlin M. Carter's Chief Counsel and of his attorney at Chicago, to be fixed and allowed by the Court.

The importance of the case, and the means and methods taken to bring the same to a just determination speedily and not the length to which the proceedings may be protracted, to be considered as the elements of merit in fixing such fees.

(b) Also the fee of his attorney for representing said Carter in case of any criminal trial in Georgia, if Carter should be placed on trial there prior to the final disposition of this case.

(c) The expenses of taking evidence on behalf of said Carter, including the services of an accountant at not exceeding ten dollars per day for his services when needed and actually employed, plus his expenses, if any.

(d) And if before the final determination of this cause the said Oberlin M. Carter shall be liberated from prison, he shall be allowed his reasonable personal expenses incurred by him while engaged in work in this cause, including the taking of evidence, but with no compensation for his time. Such expenses to be determined by the court and paid out of the monies in court.

Payments and allowances under Paragraph numbered "8" of this agreement to be determined by the Court from time to time on petition with the right of the United States to contest the same as unreasonable, or that any expense was not incurred as stated.

(9) The assent of the United States to paragraphs numbered "(1)", "(7)" and "(8)" of this agreement, is predicated upon the understanding that the said defendants will turn over to the receiver at least substantially all of the assets turned over to I. Stanton Carter, and L. D. Carter, by J. H. Paul and R. E. Westcott and James Bragg, or their proceeds and re-investments, except such as has been, prior to the receivership, bona fide paid out or pledged by them for attorneys fees or as expenses in defense of Carter, or expended by them legitimately in the handling of said prop-

erties, or which has not already been taken possession by receivers in this cause.
Nov 6, 1901

UNITED STATES OF AMERICA
by MARION ERWIN
Special Asst to Attorney General
OBERLIN M. CARTER
LORENZO D. CARTER
I STANTON CARTER
by HORACE G STONE
their Chief Counsel

ORDER

The foregoing agreement is approved & ordered spread of record in said cause

Endorsement Agreement & order to spread same of record Entered. Filed Nov 6, 1901 S. W. Burnham Clerk

And on towit: the 11th day of November 1901 in the July term 1901 of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat Judge presiding, there was made by the Court, the following order and entry thereof:

ORDER THAT N. W. HARRIS & CO. TURN OVER ASSETS TO RECEIVER AND FOR RECEIVER TO INCREASE HIS BOND.

United States of America,
v
Oberlin M. Carter *et al.* } No.

And now comes the complainant by Marion Erwin and S. H. Bethea, its solicitors, and the defendants by Horace G. Stone, their solicitor, and it appearing to the court that there has or is about to come to the hands of the receiver herein bonds and other securities of the face value of between seventy and seventy-five thousand dollars; by agreement of parties

It Is Ordered that the said receiver file herein within two days an additional bond in the sum of eighty thousand dollars, with sureties to be approved by the court.

By agreement of parties, it is also Ordered that N. W. Harris & Company turn over to the receiver herein all monies in their hands standing in the name of I. Stanton Carter or to which he was entitled which are being held by said N. W. Harris & Company, in pursuance of order herein entered on August 27th, 1901.

And on to-wit: the 22nd day of January, 1902, in the December term, 1901, of said court, in the record of proceedings thereof, in said entitled cause before the Honorable Christion C. Kohlsaat, judge presiding, there was made by the court, the following order and entry thereof by consent of parties:

ORDER DISMISSING DEMURRERS OF OBERLIN M. CARTER, L. D. CARTER AND I. S. CARTER.

The United States of America *vs.* Oberlin M. Carter, *et al.*	In Equity. Bill, Etc. Auxiliary Bill.

By agreement of parties, it is ordered by the court that the demurrers of Oberlin M. Carter, L. D. Carter and I. Stanton Carter, be dismissed, and that the said defendants be given until the first Monday in February, 1902, to file their answers to the bill pending in this court in the above stated cause.

We consent to the above.

MARION ERWIN,
Special Asst. to Atty. Genl.
HORACE G. STONE,
for the Carters.
S. H. BETHEA,
U. S. Attorney.

And on to-wit: the 1st day of February, 1902, came the defendant, Oberlin M. Carter, by Horace G. Stone and Frank P. Blair, his solicitors, and filed in the clerk's office of said court his answer to the bill of complaint in said entitled cause, in the words and figures following, to-wit:

ANSWER OF OBERLIN M. CARTER TO THE BILL.

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

United States of America
vs.
Oberlin M. Carter, *et al.*

The answer of Oberlin M. Carter, defendant, to the bill of the United States, complainant.

This defendant now and at all times hereafter, saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto, or for so much and such parts thereof as this defendant is advised it is or are material or necessary for him to make answer unto, answering says.

This defendant admits he is a citizen of the State of Ohio and is at present confined by the complainant in the United States penitentiary at Fort Leavenworth, in the State of Kansas.

This defendant denies each and every allegation and every part of each thereof contained in said bill of complaint herein under the large heading, "Carter's Duties, Powers and Discretions," and alleges the facts in that behalf to be as follows:

He admits that from about May 1, 1888, until the 20th day of July, 1897, he was continuously an officer of the Corps of Engineers, U. S. Army, stationed at Savannah, Georgia, and that he was during that period the engineer officer in local charge of the "Savannah District."

(a) He denies that he was vested with power, duty or discretion in proposing from time to time to his superiors for adoption, projects for the improvement of the rivers or harbors in said Savannah District.

He admits that when specifically ordered by his military superiors to propose, that is, to prepare and submit, a plan or project for the improvement of any particular river or harbor, it then became his duty to obey such orders. Any plan of improvement thus submitted by him in obedience to

direct orders was considered by his military superiors, approved by them in whole or in part, or entirely disapproved. When such revised plan finally received the sanction of the War Department, it then became official.

(b.) He admits that when once a plan or project for the improvement of any river or harbor had been approved by the War Department and officially assigned to him as local engineer for execution, and that when funds for work thereunder became available, he was ordered—and it then became his duty—to submit to his military superiors for their consideration and approval or disapproval, a working plan for the expenditure of the funds available.

(c.) He admits that when once a plan or project for the improvement of any river or harbor had been approved by the War Department and officially assigned to him as local engineer for execution, and that when funds for work thereunder became available, he was ordered—and it then became his duty—to prepare and to submit to his military superiors for their consideration and approval or disapproval, specifications for the work proposed, when such work was to be done by contract.

(d.) He admits that when ordered by his military superiors to submit for their consideration and approval or disapproval, specifications for work proposed to be done by contract, it was necessary to submit also for consideration a form of advertisement for giving notice to the public that competitive bids would be received for the execution of the proposed work.

(e.) He denies that he was vested with power, duty or discretion in causing to be fixed or fixing the time such advertisements would be published prior to the opening of bids.

He admits that when ordered to submit for consideration a form of advertisement, it became necessary for him to propose a time for the opening of proposals for the work, but the approval or disapproval of his suggestion rested with the War Department, by whose orders he was governed.

(f.) He denies that he was vested with power, duty or discretion in causing to be fixed or fixing for such contracts to be let, the time designated in the specifications within which the successful bidder would be required to commence work. The component paragraph of the specifications prescribing the time within which a successful bidder would be required to commence work, is approved or disapproved by

the Chief of Engineers, who alone is vested with the power to fix the time aforesaid.

(g.) and (h.) He admits that he was vested with power, duty and discretion in giving out information in regard to contracts to be let in the Savannah District, and in receiving proposals for and recommending to his military superiors the award of contracts for which proposals were received.

(i.) He admits that he was vested with power, duty and discretion in approving or rejecting the bonds required to be given by contractors, his action being subject to approval or disapproval by his military superiors.

(j.) He admits that he was vested with power, duty and discretion in superintending the work done by contractors on contracts under his supervision, and in approving and accepting, or rejecting, the work done by such contractors according as the same was in accordance with the requirements of the contracts or not.

(k.) He denies that he was vested with power, duty or discretion in approving modifications of contracts; but he admits that it was his duty to suggest for the consideration of his military superiors any modifications which seemed to him advisable, but he was governed entirely by their orders in the matter.

(l.) and (m.) He admits that he was vested with power, duty and discretion in approving or rejecting the accounts rendered to him by such contractors for material furnished and work done, according as such accounts should be fair and honest, or false and fraudulent; and when in funds, paying or refusing to pay such accounts, according as they were fair and honest or false and fraudulent.

This defendant denies as a whole and denies in every part, both generally and in detail, that he ever conspired to do or attempted to conspire to do or that he ever did or attempted to do, or discussed doing or ever thought of doing, either alone or in connection with others, or ever aided or advised or permitted others to do or attempt to do, or ever knew of others doing or attempting to do or discuss or conspire doing or attempting to do all or any of the acts or things or any part of any thereof which are described in said bill of complaint herein as follows:

(a.) Under the heading, "The scheme devised to defraud."

(b.) Under the heading, "The scheme to defraud put in operation."

(c.) Under the heading, "Details of the fraud introduced into and under the contracts."

(d.) Under the heading, "The division of the money."

This defendant denies each and every allegation and every part thereof under the large heading, "Description of the Engineering Work," and alleges the facts in that behalf to be as follows, and not otherwise:

When this defendant was assigned to duty in the Savannah District, in 1884, he was placed under the immediate orders of Lieut. Bailey, who was an assistant to General Gillmore, the officer then in charge.

The work of construction consisted for the most part in building training walls and spur dams designed to train and concentrate the flow of the water in the channel whose improvement was desired, and in the revetment of caving banks. In the execution of such work logs, brush, fascines and stone were employed. In the upper reaches of the rivers the works of improvement were constructed of brush fascines, which were usually placed in the work singly and secured by stakes or by a load of stone, or by both. When the water was too deep to permit of placing the fascines in the work singly, they were made into mattresses for the purpose of holding them together until in place to receive their securing load of stone. Inasmuch as the number of fascines sunk in the form of mattresses was entirely insignificant in comparison with the number sunk as single fascines, the contractor was not asked to submit a bid for mattresses, the price for which would have been excessive, but was required to perform this more expensive work, so small in amount, at the cost only of the fascines composing it, which under the circumstances he was willing to do. Fascines and stone were paid for separately at the prices bid and according to the amounts used of each.

In the tidal estuaries the works of improvement were constructed of log and brush mattresses. Those mattresses were composed of a raft of pine logs held together by transverse binding poles spiked to them, and covered with loose brush so spread over the logs as to break the force of the stone thrown upon them, and to prevent the logs from being torn loose from the binders. The brush was small in amount—about 6″ in the finished mattress—and was not intended to and did not give any final height in the wall or dam. The log mattresses floated in the water and were towed to the place of use by tugs and weighted with sufficient stone to sink them where required. Upon each mattress so sunk another

was superimposed until the crest was at the desired height, when it was covered with the finishing layer of stone. Stone and mattresses were paid for separately at the respective contract prices and according to the quantity used of each. As a matter of economy, no stone was desired except on the top mattress, but in d fault of any other practicable method of sinking, such amounts as were necessary were used on the lower courses as well.

The inflexible nature of the log mattress led to much underscour of the soft bottom and to settlement. It was impossible to fill those irregular gaps with log mattresses, and hence flexible brush fascines were resorted to. Those fascines are entirely different from the rigid fascines used for military purposes, and are sometimes called "engineering fascines." The object being to check the flow of the silt-laden current and make it deposit its burden, thus causing the river to assist in building its own improvement works, as much fine brush, twigs and leaves were desired as could be placed in a properly constructed fascine, and the specifications were designed with that end in view, as is always customary in similar work. Those fascines were paid for by the cubic yard. Occasionally a hole was encountered too deep to permit of single fascines being used, and as in the up-river work, the contractor was then required to bundle fascines together into a mattress to hold them in place until they could receive their securing load of stone. The cost of such work was much greater than to put in the fascines singly, and bids for brush mattresses were not called for inasmuch as the price would have been excessive, but as the number of fascines thus sunk was entirely insignificant in comparison with the number sunk as single fascines, the contractor was required to perform the more expensive work, so small in amount, at the price of the fascines composing it. The ordinary log mattress having been patented, a second design similar thereto, but avoiding the patent, was set forth in the specifications, and permission was given to substitute it for the ordinary design and at the same price, in order that the owner of the patent might not have a monopoly of the work. Various plans were considered looking toward the feasibility of substituting a flexible mattress of brush fascines for the unsatisfactory, rigid mattress of logs, but brush mattresses not floating so well as log mattresses, and hence being more expensive to handle, prevented. Finally, after numerous experiments, it became possible to construct and sink mattresses of brush fascines at

about the same cost as those of logs, and then for the first time were brush mattresses called for in the specifications for contract work in the Savannah District.

This defendant alleges that all the said work let in said Savannah District from about May 1, 1888, when this defendant took charge of said district up to July 20, 1897, when this defendant was transferred elsewhere was always let to the lowest bidder; that all bidders were treated alike in every way; that all bids received were treated alike; that all contractors were treated alike. There was no discrimination in anything or in favor of anybody. No secret information was given to anybody and no advantage given to anybody.

This defendant denies that any work was ever let on his recommendation or by or through him at prices higher than had been previously paid for similar work, except where there had been changes in values justifying the same.

This defendant alleges that all specifications drawn by him for any of said contracts were so drawn as to be easily understood by proposed bidders who knew anything about such work.

This defendant alleges that wherever the United States was given the option under any of said contracts to require either one thing or another at the same price, that said option was inserted in said contract or contracts for the sole benefit of the United States and was always exercised by this defendant for the sole benefit of the United States and not otherwise, and this defendant alleges that it is the universal custom in such contracts to insert such an option and for contractors to bid on such an option.

This defendant denies that any contract let in said Savannah District while this defendant had charge thereof was ever let on advertisement less than required by law, and he alleges that in every instance the time for advertising was not fixed by this defendant, but by his superior officers.

This defendant denies that in any contract with the United States let while defendant was in charge of said Savannah District the price of anything contracted for was higher than the fair cash market value of the same at the time and place of delivery.

This defendant denies that in the performance of any of said contracts with the United States while this defendant was in charge of said Savannah District that any material or other thing contracted for was received or paid for of a

quality inferior or of a different kind than that contracted for in said contract or otherwise different from the requirements of said contract.

This defendant denies that he ever furnished or caused to be furnished to any contractor or contractors with the United States any money or property for any purpose whatever.

This defendant denies that any money or the proceeds thereof ever paid by the United States to any of its contractors was ever traced directly or indirectly to this defendant.

This defendant denies that he ever at any time, directly or indirectly, made or caused to be made the investments described in said bill of complaint under the large heading, "Carter's Investments," etc., or any of the same or any part of any thereof except as follows:

(a) During the absence of his father-in-law, R. F. Westcott, in Europe, this defendant acted as agent for said Westcott under the written powers of attorney in handling the money and property of said Westcott, and as such agent this defendant bought or received on behalf of said Westcott about $139,186 of bonds and notes which were all paid for with the private funds of said Westcott, and on each return from Europe of said Westcott this defendant promptly delivered all of said bonds and notes to said Westcott and fully accounted to said Westcott for this defendant's said agencies, and this defendant had no interest, direct, or indirect, legal or equitable, in any of said bonds or notes so bought or received.

(b) This defendant bought the Propellor Towboat stock and the Savannah Brewing Company stock and the Savannah Lighterage and Trust Company stock and the Brush Electric Light Company stock, referred to in said bill of complaint, and paid for the same substantially all out of money donated to this defendant or to his wife by his father-in-law, the late Robert F. Westcott, the remainder being paid out of this defendant's salary as an officer of the United States army.

This defendant denies that the sum of $1,575 or any other sum was ever paid or allowed to him directly or indirectly in connection with his trips to New York or otherwise by any contractor or contractors with the United States, or by anybody for any of them.

This defendant denies that he was ever a party to or interested in or a beneficiary of, or had any knowledge of any division of any money ever received on contracts with the United

States, or that he ever received directly or indirectly any of the proceeds of any such division, or that it was ever understood or agreed that he should receive directly or indirectly any of the money or the proceeds thereof ever paid or agreed to be paid by the United States to any person or corporation except his own salary and allowances as an officer of the army.

This defendant denies that he ever received or had directly or indirectly in himself or through any other person or corporation any interest or beneficial advantage in or to any of the contracts mentioned in said bill of complaint or in any of the proceeds thereof, or that he ever received or had any of the proceeds of any of said contracts or ever received or had any money or property or valuable consideration by reason of the making or carrying out of said contracts or that he ever received or had from any of the contractors directly or indirectly any money, property, benefits, advantage or consideration.

This defendant denies that there was ever any division directly or indirectly of any money or anything else by thirds or on any other basis between this defendant and Benjamin D. Greene and John F. Gaynor or between this defendant and either said Greene or said Gaynor.

This defendant denies that while in charge of said Savannah District that he ever borrowed or caused to be borrowed any money from Benjamin D. Greene or from any other contractor with the United States or that he received any benefit or advantage or gift or gratuity from any of said contractors either directly or indirectly.

This defendant denies that he ever made any investments in stocks or bonds or loans or real estate or in anything else secretly, or that he ever made any investments of any kind, except out of his own money or as agent for others, and denies that he ever made any investments either for himself or for others out of money belonging to the United States or coming in whole or in part from any contracts or contractors with the United States.

This defendant denies that he ever at any time owned or claimed to own, either directly or indirectly, or that anyone else held for him in trust or otherwise or that he ever possessed or held, except as agent for others, money, property and things of pecuniary value of $10,000 over and above what was given to him from time to time as a pure donation by his father-in-law, the late Robert F. Westcott.

This defendant denies that he ever had any interest direct or indirect in any contract ever let or performed in said Savannah District, or in any part of any thereof, or that he ever received any benefit or advantage of any kind out of any of said contracts or from any person or corporation owning, or claiming or carrying out any of said contracts.

This defendant admits that from the year 1890 this defendant expended for his personal expenses more than his salary as an officer in the United States army, but he denies that any of his said personal expenses were paid directly or indirectly out of any money or property received by him or by anyone else either directly or indirectly from any work or contracts under his charge or from any work done for or contracts with the United States. This defendant alleges in that behalf that substantially all his income during said period not derived from his salary as said officer was received by him from his father-in-law, Robert F. Westcott, as a pure and original donation from the private funds of said Westcott, and not from any other source.

This defendant denies that he ever paid or caused to be paid anything whatever towards the purchase of the property described in said bill of complaint under the large heading "The 8th Avenue Property," either from any money ever intrusted to him as disbursing officer or otherwise, or from any other source or from his own money or property, or that he ever invested anything therein, either directly or indirectly, but alleges the facts to be on the contrary that the sole and only interest in said property which this defendant ever had was received from his father-in-law, the late Robert F. Westcott, who gave him said property as a pure and original donation.

This defendant denies that he ever paid or caused to be paid anything whatever towards the loan described in said bill of complaint under the large heading "The Beirne Gordon Notes," either from any money ever intrusted to him as disbursing officer or otherwise, or from any other source or from his own money or property, or that he ever invested anything therein, either directly or indirectly, except that he acted as agent for his father-in-law, Robert F. Westcott, in lending said Westcott's own money to said Gordon on said loan, and the sole and only interest which this defendant ever had in said loan was received by him from the said Westcott, his father-in-law, in October, 1897, who then gave all of said loan

then uncollected to this defendant as a pure and original donation.

This defendant denies that he ever paid or caused to be paid anything whatever towards the purchase of the property described in said bill of complaint under the large heading, "Orange, New Jersey, Property," either from any money intrusted to him as disbursing officer or otherwise, or from any other source or from his own money or property, or that he ever invested anything therein, either directly or indirectly, but he alleges the facts to be on the contrary that his sole and only interest in said property was received from his father-in-law, the late Robert F. Westcott, who gave him the only interest he ever had in said property as a pure and original donation, except that a part of the money given by said Westcott to this defendant's wife may have been used to partly pay for said property.

This defendant denies that he ever paid or caused to be paid anything whatever towards the loan described in said bill of complaint as made to T. M. Cunningham for $10,000 either from any money ever intrusted to him as disbursing officer or otherwise, or from any other source, or from his own money or property, or that he ever invested anything therein either directly or indirectly except that he acted as agent for his father-in-law, Robert F. Westcott, in lending said Westcott's own money to said Cunningham on said loan during said Westcott's absence in Europe, and the sole and only interest which this defendant ever had in said loan was received by him from said Westcott, his father-in-law, in October, 1897, who then gave all of said loan then uncollected to this defendant as a pure and original donation.

This defendant denies that "he succeeded in causing himself to be appointed as military attache to the Court of St. James and also a member of the Nicaragua Canal Commission" or either of the same.

This defendant admits that when he left Savannah to go to London as military attache that he packed up some of his private correspondence in a letter file case belonging to the United States and left it at Savannah for safe keeping until his return, when he intended to transfer such correspondence to such other place in the United States as he might be assigned to, and he denies that there was anything wrongful or unusual in such a transaction.

This defendant admits that he was succeeded at Savannah by one Captain Cassius E. Gillette, who has more than once

attacked the good faith and motives of his brother officers. That said Gillette immediately on arriving at Savannah commenced attacking this defendant, but did so secretly and without this defendant's knowledge until he, the said Gillette, had by falsehoods and subornation of perjury created serious suspicions in the minds of this defendant's superior officers, all during the absence of this defendant in Europe, and on this defendant's return from Europe he heard of these things for the first time and at once demanded a court of inquiry, which was selected by Gen. John M. Wilson, the recently appointed chief of engineers, who for a long time prior thereto had been hostile to this defendant. Said court of inquiry consisted of three engineer officers, a majority of whom were so prejudiced against this defendant that they refused to even examine the work done by this defendant, and who recommended that this defendant be tried by a court martial. Thereupon a court martial was ordered, consisting of thirteen members, only two of whom were engineer officers or engineers, notwithstanding the fact that the work done by this defendant in said Savannah District was river and harbor work requiring the highest engineering skill and experience and with which work eleven of said thirteen members of said court martial had little, if any, knowledge and no experience whatever.

Before said court martial the said Gillette et al. made thirty-seven charges against this defendant, upon all of which except three this defendant was acquitted either by the court martial or by the president, and on the said three charges the Hon. George F. Edmunds, to whom the matter was referred by the president and who spent two months considering the same, reported to the president that this defendant was not guilty and should be acquitted. The said three charges were but one act divided into three parts so as to look larger, with simply a charge that this defendant by arrangement with the contractors received and paid for certain materials which were inferior to those called for by the contract. All the other false and groundless charges were made in furtherance of a conspiracy between said Gillette and others to ruin this defendant by making so many charges that this defendant would not be able to meet and overcome them all at once.

As to the one act charged against this defendant, i. e., that materials were received and paid for which were inferior to the contract, but one officer of the United States army

was found who would testify to that effect, and that officer was the said Cassius E. Gillette.

On the contrary, nine of the ablest and highest engineer officers of the United States army testified in favor of this defendant that the materials were in full compliance with the contract, and that the work was of the very best. And in addition thereto ten of the ablest and most reliable expert engineers in the United States also testified that the materials were in full compliance with the contract and that the work was of the very best.

Said Gillette was not corroborated except by some of his subordinates, one of whom admitted on the witness stand that he would testify to almost anything to save his job, and others of whom had been former employes under this defendant and who had certified on their honor to this defendant that the materials were in accordance with the contracts, and who then turned around at the instigation of said Gillette et al. and testified exactly the other way.

Notwithstanding the testimony of said nineteen army and expert engineers in this defendant's favor and only one engineer to the contrary, the court martial disregarded the testimony of the nineteen and a majority thereof acted upon the testimony of the one and this defendant was accordingly convicted.

The action of the court martrial was not influenced by any charge or evidence that this defendant ever received any money or benefit from any of the work done under his charge because at that time no such charge was made, said latter charge being made by an entirely different set of men at a subsequent date.

This defendant denies as grossly false the allegation on "information" in said bill of complaint that he solicited said Robert F. Westcott to testify falsely before said court martial.

This defendant admits that the trial of this defendant before said court martial "was given great publicity through the newspapers," and alleges that this publicity consisted principally of false charges and suspicions and interviews by said Gillette et al.

This defendant denies that said Robert F. Westcott departed for Europe to avoid testifying before said court martial "against his said son-in-law" or against "the husband of his dead child," as the said court martial had no power to compel said Westcott to testify at all.

This defendant is advised that he is not bound to answer any allegations as to what said Robert F. Westcott would have testified to or as to what he did testify to in proceedings other than this, and hence without confessing any of said allegations he makes no answer thereunto anywhere herein except that if it is necessary or material for him to make answer thereunto he denies each and every of said allegations and every part of each thereof, but not otherwise.

This defendant denies that in September, 1897, or at any other time this defendant took out of his safety deposit box or from anywhere else any securities described in Exhibit E or elsewhere, or that at that time or at any other time he turned any securities over to Benjamin D. Greene and John F. Gaynor, or to either at the Hoffman House or anywhere else for safe keeping, or for any other purpose or that any securities were ever delivered by said Greene and Gaynor or by either of them to Robert F. Westcott for safe keeping for this defendant or for any other purpose, or that said Westcott delivered back any securities to this defendant at any time, or that any of the securities described in said receipts of October 11, 1897, and October 29, 1897, ever belonged to this defendant or that he ever had any interest therein directly or indirectly until the same were respectively given to this defendant as a pure and original donation by said Westcott at the time of said respective receipts in October, 1897.

This defendant admits that said Benjamin D. Greene and said John F. Gaynor and this defendant all testified before said board of inquiry or said court martial that this defendant never had any beneficial interest in any of said contracts let in said Savannah District, and that the same was and is true in substance and in fact, and that this defendant testified before said board of inquiry and before said court martial that the expenditures of this defendant since 1890 were largely from gifts to this defendant by his father-in-law, said Robert F. Westcott, and that the same was and is true in substance and in fact.

This defendant is informed that he was indicted at Savannah in connection with others on the ground that the material furnished by the contractors was inferior to the requirements of the contracts, but he is advised that an indictment by a grand jury in Savannah is not evidence in an equity suit in Chicago.

This defendant knows nothing except by hearsay of the

matters alleged in said bill of complaint under the large heading, "The Hearing for Removal." This defendant was not a party to said proceedings or represented therein. This defendant is advised that such matters are not admissible in evidence in this suit in equity, and that such allegations are therefore not proper in this suit, and this defendant leaves it to the complainant to explain the purpose and object of including such matters in the bill of complaint herein.

This defendant is advised that the incarceration of this defendant in a military prison by sentence of a court martial is not in and of itself notice to those dealing with this defendant that this defendant's title to his private property may be eventually attacked by the United States.

This defendant admits that Lorenzo D. Carter is his uncle and that I. Stanton Carter is his brother, and that he employed each of them to help him and gave a power of attorney and other authority to I. Stanton Carter and also gave authority to Lorenzo D. Carter to act for this defendant, and both Lorenzo D. Carter and I. Stanton Carter have so acted for this defendant and have fully accounted to this defendant for all their said acts and neither said Lorenzo D. Carter nor I. Stanton Carter have any money or property now in their hands or under their control belonging to this defendant or described in said bill except as stated by them in their answers filed herein.

This defendant denies that either Lorenzo D. Carter or I. Stanton Carter entered into any conspiracy with this defendant or with any one else to receive or conceal or dispose of any stolen or fraudulently acquired property or that either of them ever took any property with notice of any infirmity in the title thereof or with notice of any trust in favor of anybody.

This defendant denies that said Lorenzo D. Carter or I. Stanton Carter ever acted for this defendant or for any one else except in good faith and without any notice of any wrongdoing by this defendant.

This defendant admits that the "8th Avenue Property" and the "Orange, N. J., Property" were conveyed to Lorenzo D. Carter and that the "Orange, N. J., Property" was at one time conveyed to Frank P. Blair, who reconveyed it to I. Stanton Carter, who conveyed it to Lorenzo D. Carter.

This defendant denies each and every allegation of said bill of complaint herein and each and every part of each thereof not hereinbefore specifically admitted or denied.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said complainants charged, without this, that there is any other matter, cause or thing in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, avoided or denied, is true to the knowledge or belief of this defendant, all of which matters and things this defendant is ready and willing to aver, maintain and prove, as this Honorable Court may direct, and humbly prays to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

OBERLIN M. CARTER.

HORACE G. STONE AND
FRANK P. BLAIR,
Solicitors for said Oberlin M. Carter.

United States of America,
Northern District of Illinois,
Northern Division.

State of Kansas,
County of Leavenworth. } ss.

Oberlin M. Carter, being first duly sworn, on oath deposes and says that he is one of the defendants in the above entitled cause; that he has read the foregoing answer and knows the contents thereof, and as to all matters therein stated as done or not done or known or not known by this defendant, the said answer is true in substance and in fact, and as to all other matters he is informed and believes the same to be true in substance and in fact.

OBERLIN M. CARTER.

Subscribed and sworn to before me this 31 day of January, 1902.

JOHN C. RIPLEY,
Notary Public.

(Notarial Seal)
My Com. Expires Sept. 1st, 1904.

Endorsement: Answer of Oberlin M. Carter, defendant, to the Bill of the United States, complainant. Filed Feb. 1, 1902. S. W. Burnham, Clerk.

And on to wit: the 1st day of February, 1902, came the defendant Lorenzo D. Carter, by Horace G. Stone, his solicitor, and filed in the clerk's office of said Court his Answer to the Bill of Complaint, in said entitled cause, in the words and figures following to wit:

ANSWER OF LORENZO D. CARTER TO BILL.

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

United States of America
vs.
Oberlin M. Carter *et al.*

The answer of Lorenzo D. Carter, defendant, to the bill of the United States, complainant.

This defendant now and at all times hereafter, saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto, or for so much and such parts thereof as this defendant is advised it is or are material or necessary for him to make answer unto, answering says:

This defendant admits that he is a citizen of the State of Illinois and that he is an uncle of the defendant Oberlin M. Carter.

This defendant adopts as part of his answer herein the answer this day filed herein by Oberlin M. Carter, one of the defendants herein.

This defendant denies that he ever joined, or took part in, or knew of, or discussed or suspected or had reason to suspect any scheme or conspiracy to defraud the United States or to conceal any property or the proceeds thereof ever derived from contracts or contractors with the United States or from any other source.

This defendant admits and alleges that at the request of said Oberlin M. Carter, he assisted said Oberlin M. Carter in this efforts to defend himself and to obtain justice and that in so doing he received certain money and property from said Oberlin M. Carter, and paid it all out on behalf of said Oberlin M. Carter, and accounted to him for all of the

same and all of this defendant's said acts and doings were then and there approved and ratified by said Oberlin M. Carter.

This defendant denies that he ever had any notice, knowledge, information or suspicion that any money or property ever received by this defendant from said Oberlin M. Carter, directly or indirectly, was ever obtained by him or by anybody else by or through any fraud or wrong doing whatever, and this defendant alleges that he always acted in all things referred to in said bill of complaint and in everything else in the utmost good faith.

This defendant admits that the "8th Avenue Property" and the "Orange, New Jersey, Property" were conveyed to this defendant, but that by an agreement between this defendant and the complainant made since the filing of the bill herein this defendant agreed to disclaim any interest in either of said properties, and to account for all property ever in his hands claimed by said Oberlin M. Carter, which latter he has done, and in consideration of which this defendant was to be finally dismissed from this suit, and he hereby offers to carry out his part of that contract.

This defendant admits that he has not turned over to the receiver appointed herein twenty-one Kentucky Central bonds of $1,000.00 each, described in said bill of complaint, because the said bonds belong to him personally, as he paid out his own money on behalf of said Oberlin M. Carter to the value of said bonds and took the said bonds as payment thereof, and has accounted under said agreement with the complainant with regard to said disbursements.

This defendant denies each and every allegation of said bill of complaint herein and each and every part of each thereof not hereinbefore specifically admitted or denied.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said complainants charged, without this, that there is any other matter, cause or thing in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, avoided or denied, is true to the knowledge or belief of this defendant, all of which matters and things this defendant is ready and willing to aver, maintain and prove, as this Honorable Court may direct, and humbly prays to be dismissed with his rea-

sonable costs and charges in this behalf most wrongfully sustained.

LORENZO D. CARTER,
By H. G. STONE,
His Solicitor.

HORACE G. STONE,
Solr. for L. D. Carter.

Endorsement: Answer of Lorenzo D. Carter to Bill of the United States. Filed Feb. 1, 1902. S. W. Burnham, Clerk.

And on to wit: the 1st day of February, 1902, came the defendant I. Stanton Carter by Horace G. Stone, his solicitor, and filed in the clerk's office of said court, his Answer to the Bill of Complaint, in said entitled cause, in the words and figures following to wit:

ANSWER OF I. STANTON CARTER TO BILL.

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

United States of America
vs.
Oberlin M. Carter *et al.*

The answer of I. Stanton Carter, defendant, to the bill of the United States, complainant.

This defendant now and at all times hereafter, saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto, or for so much and such parts thereof as this defendant is advised it is or are material or necessary for him to make answer unto, answering says:

This defendant admits he is a citizen of the State of Illinois and that he is a brother of the defendant Oberlin M. Carter.

This defendant adopts as part of his answer herein the answer this day filed herein by Oberlin M. Carter, one of the defendants herein.

This defendant denies that he ever joined, or took part in or knew of, or discussed or suspected or had reason to suspect any scheme or conspiracy to defraud the United States

or to conceal any property or the proceeds thereof ever derived from contracts or contractors with the United States or from any other source.

This defendant admits that he took a power of attorney and other authority from said Oberlin M. Carter to act for said Carter and that in pursuance thereof he did so act.

This defendant admits and alleges that at the request of said Oberlin M. Carter he assisted said Oberlin M. Carter in his efforts to defend himself and to obtain justice, and that in so doing he received certain money and property from said Oberlin M. Carter and paid it all out on behalf of said Oberlin M. Carter and accounted to him for all of the same and all of this defendants said acts and doings were then and there approved and ratified by said Oberlin M. Carter.

This defendant alleges that since the filing of this bill this defendant made an agreement with the complainant by which this defendant was to account for all property ever in his hands claimed by said Oberlin M. Carter, which he has done, in consideration of which this defendant was to be finally dismissed from this suit.

This defendant denies that he ever had any notice, knowledge, information or suspicion that any money or property ever received by this defendant from said Oberlin M. Carter, directly or indirectly, was ever obtained by him or by anybody else by or through any fraud or wrong doing whatever and this defendant alleges that he always acted in all things referred to in said bill of complaint and in everything else in the utmost good faith.

This defendant admits that he has not turned over to the receiver appointed herein two bonds of $1,000.00 each, known as a Kentucky Central bond and a Michigan Telephone bond, and described in said bill of complaint, because the said bonds belong to him personally as he paid out his own money on behalf of said Oberlin M. Carter to the value of said bonds and took said bonds in payment and has accounted under said agreement with the complainants with regard to said disbursements.

This defendant admits that he testified before the said Court Martial that he saw Robert F. Westcott give money to said Oberlin M. Carter.

This defendant denies each and every allegation of said bill of complaint herein and each and every part of each thereof not hereinbefore specifically admitted or denied.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said complainants charged, without this, that there is any other matter, cause or thing in the said complainants' said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, avoided or denied, is true to the knowledge or belief of this defendant, all of which matters and things this defendant is ready and willing to aver, maintain and prove, as this Honorable Court may direct, and humbly prays to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

I. STANTON CARTER,
By H. G. STONE,
His Solicitor.

HORACE G. STONE,
Solr, for I. S. Carter.

Endorsement: Answer of I. Stanton Carter to Bill of the United States. Filed Feb. 1, 1902. W. S. Burnham, Clerk.

And on to wit: the 3rd day of March, 1902, came the complainant, by Marion Erwin, its solicitor of record, and filed in the clerk's office of said court, a replication in the words and figures following to wit:

REPLICATION TO ANSWERS TO BILL.

In the Circuit Court of the United States for the Northern District of Illinois.

March Rules 1902.

United States of America *vs.* Oberlin M. Carter *et al.* } In Equity, Bill, etc. Replication.

The replication of the above named complainant to the answers of Oberlin M. Carter, Lorenzo D. Carter and I. Stanton Carter.

This repliant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of said defendant, for replication thereunto says

that it does and will ever aver, maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by said defendant, and that the answer of said defendants are very uncertain, evasive and insufficient in the law to be replied unto by this repliant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, confessed or avoided, traversed or denied as true; all of which matters and things this repliant is ready to aver, maintain and prove as this Honorable Court shall direct. And humbly prays as in and by its said bill it has already prayed.

MARION ERWIN,
Special Assistant Attorney General,
Solicitor for Complainant.

Endorsement: Filed Mar. 3, 1902. S. W. Burnham, Clerk.

And to wit: on the 29th day of April, 1902, came the complainant by its solicitors of record, and filed in the clerk's office of said Court, a petition and affidavit for extension of time to take testimony, and a stipulation of counsel in respect thereto, the words and figures following to wit:

PETITION OF UNITED STATES FOR EXTENSION OF TIME FOR TAKING TESTIMONY.

United States of America,
Southern District of New York, } ss.

Marion Erwin, Special Assistant to the Attorney General, being duly sworn in the Equity cause of the United States vs. Oberlin M. Carter et al. pending on bill and auxiliary bills, in the Southern District of New York, District of New Jersey, Southern District of Georgia, Southern District of West Virginia, Southern District of Illinois and Northern District of Illinois, being duly sworn deposes and says:—

It is necessary in order to prevent repetition of labor and expense, that the testimony to be taken in said causes should be taken so as to be made available and applicable to all the defendants to the bills in each district. That there are a large number of witnesses on part of the United States whose testimony is material and which it will be necessary to take in different parts of the United States.

That owing to the fact that Messrs. Kellogg & Rose original

counsel of record for O. M. Carter, in the said bills pending in New York and New Jersey, withdrew from the said cases, and said O. M. Carter was without local representation in New York and New Jersey, at the request of H. G. Stone, Esq., of Chicago, principal counsel for said O. M. Carter, I. S. Carter and L. D. Carter, the counsel for the United States granted said defendants time to file answers in said districts, so that the answers when finally filed were put at issue at different times in the several districts, and in case of the bill pending in New Jersey not until April Rules 1902. That the cases are now at issue in all of the Districts, except in the Southern District of Georgia, where a demurrer is still pending filed by Mackall & Anderson charged in the bill to be holding for O. M. Carter certain of the assets in dispute (most of which assets have since been delivered to the receiver). That this demurrer will be disposed of as soon as a hearing can be obtained, and that then all the causes will be in a condition for taking the testimony, once for all the said cases, at a great saving of time, and expense for all parties.

That owing to the fact that affiant has had charge of the criminal prosecution in the Southern District of Georgia, against Benjamin D. Greene, John F. Gaynor alleged co-conspirators of O. M. Carter et al. in the frauds charged in said bills, and that pending their trial the said Benjamin D. Greene and John F. Gaynor have recently forfeited their recognizances and fled from justice, affiant's time has been so much taken up that he is unable to proceed to take said testimony immediately, and that affiant has been notified by said H. G. Stone, counsel for the said O. M. Carter, that he desires to inspect certain papers and documents in the custody of the Government before proceeding to take testimony, and that as far as the same is proper affiant is desirous of complying with said request, believing that it will tend to speed the cause and promote the ends of justice.

For the above stated reasons, affiant makes this affidavit for the purpose of obtaining from the court an order extending the time to take testimony for six months from this date.

MARION ERWIN.

Sworn to and subscribed before me this 25th day of April, 1902.

JOHN A. SHIELDS,
U. S. Commissioner.

(Seal)

STIPULATION.

United States of America
vs.
Oberlin M. Carter, *et al.* } Bill, Auxiliary Bills, &c.

Pending in So. Dist. of New York, Dist. of New Jersey, So. Dist. of Georgia, So. Dist. of West Va., So. Dist. of Illinois and Northern Dist. of Illinois.

It is agreed by counsel of O. M. Carter, I. S. Carter and L. D. Carter, and counsel for the United States, that the time for taking testimony in the above stated causes be extended for six months from this date, without prejudice to the right of either party, to move the court for additional time, should the circumstances then require it.

April 28, 1902.

MARION ERWIN,
Special Asst. to Atty. Genl.
HORACE G. STONE.

Endorsement: Petition of U. S., filed April 29, 1902. S. W. Burnham, Clerk.

And on to-wit: the 29th day of April, 1902, in the December term, 1901, of said court, in the record of proceedings thereof, in said entitled cause before the Honorable Christian C. Kohlsaat, judge presiding, there was made by the court, the following order and entry thereof:

ORDER EXTENDING TIME FOR SIX MONTHS TO TAKE TESTIMONY.

United States of America
vs.
Oberlin M. Carter, *et al.* } In Equity Bill &c.

It is ordered by the court, that the time for taking testimony in the above stated cause be extended for six months from this date.

And on to-wit: the 15th day of September, 1902, in the July term, 1902, of said court, in the record of proceedings thereof, in said entitled cause before the Honorable Christian C. Kohlsaat, judge presiding, there was made by the court, the following order and entry thereof.

ORDER EXTENDING TIME, AND FOR METHOD OF TAKING TESTIMONY IN OTHER DISTRICTS.

United States of America, *Complainant.*	In Equity.
vs.	Bill, Etc.
Oberlin M. Carter, *et al.*, *Defendants.*	No. 25,980.

On motion of the complainant's solicitors, it is ordered, that the limitation of time for taking testimony by any of the parties to said cause which under the order of this court heretofore made, would expire October 29th, 1902, be and is hereby extended for three months from said date.

It is further ordered that the testimony may be taken in any district in which the witnesses may be, before any examiner of the Circuit Court of the United States for such district, after reasonable notice to the opposite party, and also testimony of witnesses in New York may be taken before Clarence A. Parsons, the special examiner appointed for that purpose by the Circuit Court for the Southern District of New York. Testimony so taken shall be taken and reported to this court agreeably to the provisions of the 67th equity rule.

The method provided by this order for taking testimony shall not be taken as cutting off the right of the parties to take testimony by commissioner or by any other method authorized by law.

And on to-wit: the 15th day of October, 1902 in the July term, 1902, of said court, in the record of proceedings thereof, in said entitled cause before the Honorable Christian C. Kohlsaat, judge presiding, there was made by the court, the following order and entry thereof:

ORDER OF REFERENCE TO WM. M. BOOTH, SPECIAL MASTER.

United States of America
vs.
Oberlin M. Carter, *et al.* } In Equity. 25980.

Upon motion of complainant's solicitor:

It is ordered by the court that William M. Booth be and is hereby appointed special master in the above entitled cause, to take and report evidence and his findings of fact thereon on the following matters hereby referred to him:

(1) What assets or proceeds thereof, or re-investments thereof, charged by the complainant to have been a part of the trust funds diverted by O. M. Carter, and in the possession, power or control of I. Stanton Carter, and Lorenzo D. Carter on the date of notice to them of the appointment of Max H. Whitney, receiver, or since then coming into the hands of either of them, if any, is yet properly to be accounted for to the receiver and yet to be turned over to the receiver by them and either of them respectively, under the orders of the court in the premises and the terms of the agreement of November 6th, 1901, approved by this court on that date.

(2) Whether said Lorenzo D. Carter and I. Stanton Carter have turned over to the receiver herein

"Substantially all of the assets turned over to I. Stanton Carter and L. D. Carter by J. H. Paul and R. E. Westcott and James Bragg, or their proceeds and reinvestments except such as has been prior to the receivership bona fide paid out or pledged by them for attorneys' fees or as expenses in defense of Carter, or expended by them legitimately in the handling of said properties, or which has not already been taken possession of by receivers in this cause." And if any thereof has not been turned over, or properly accounted for by them, or either of them respectively, then to report what has not been so accounted for.

(3) That if I. Stanton Carter and Lorenzo D. Carter have not already turned over to or accounted to the receiver for such assets which ought to be so accounted for, that said master shall before reporting his findings, afford them an opportunity to appear before him and to properly account if they can for such assets as should be so accounted for to the receiver by them.

Said master shall have all the usual powers of a master in chancery in carrying out the foregoing reference and may employ a stenographer to take and report the evidence and proceedings before him. The parties and the master shall proceed promptly in this reference and the master shall make his report as soon as possible.

And on to-wit: the 26th day of January, 1903, in the December term, 1902, of said court, in the record of proceedings thereof, in said entitled cause before the Honorable Christian C. Kohlsaat, judge presiding, there was made by the court, the following order and entry thereof.

ORDER TAKING OFF TIME LIMIT AS TO TAKING TESTIMONY.

The United States of America
vs.
Oberlin M. Carter, *et al.*
} In Equity. Bill, Etc.

Order as to Testimony.

It is ordered by the court that the time limit heretofore fixed within which the parties were to take testimony is extended to allow the parties further reasonable time to take their testimony, with the right of any party to move later for fixing a time limit if they fail to agree among themselves in reference thereto.

Assented to:

MARION ERWIN,
Sp. Asst. to Atty. Genl. Solr. for Complt.
HORACE G. STONE,
Solr. for Carters.

And on to-wit: the 7th day of January, 1904, in the December term, 1903, of said court, in the record of proceedings thereof, in said entitled cause before the Honorable Christian C. Kohlsaat, judge presiding, there was made by the court, the following interlocutory decree, in the words and figures following, to-wit:

The United States of America
against
Oberlin M. Carter, *et al.*
} Bill, &c. 25980.

Report of master under reference order of October 15th, 1902. Exceptions to report.

INTERLOCUTORY DECREE.

The above stated cause came on to be heard before the court, the Honorable Christian C. Kohlsaat, judge presiding, upon the respective exceptions of the complainants and of the defendants respectively to the report of W. M. Booth, special master in the above stated matter and upon the pleadings and proofs, and was argued by counsel. Whereupon it is considered, adjudged, ordered and decreed by this court this 7th day of January, 1904, as follows:

(1) That so much of said master's report as allows salaries as such to I. Stanton Carter and Lorenzo D. Carter and sets the same off against the assets for which they are accountable to the receiver, be and the same is hereby set aside. The question of the right of the said defendants to set up said claims for salaries as against the funds turned over to the receiver, or for which they may be held accountable, being hereby reserved for the hearing on final decree with the other issues on the merits of the main controversy between the United States and the defendants, O. M. Carter, I. S. Carter and L. D. Carter.

(2) And it appearing to the court that at the time of notice to them of the appointment of the receiver, September 1st, 1901, and of the agreement and order of November 6th, 1901, there were in the hands of said I. S. Carter and L. D. Carter certain bonds with coupons attached, being part of the re-investments of said funds claimed by the United States to be part of the diverted trust funds in controversy, which have not been all turned over to the receiver, to-wit:

In the hands of I. Stanton Carter:

1 Michigan Telephone Company bond, par value $1,000.00, being a five per cent. bond, coupons payable January and July and numbered 2472.

1 Kentucky Central bond, par value $1,000.00, being a four per cent. bond, coupons payable January and July, and numbered No. 5119.

In the hands of L. D. Carter:

21 Kentucky Central bonds, par value $1,000.00 each, being four per cent. bonds, coupons payable January and July, and numbered 3776, 3782 to 3798 inclusive, 5960 to 5961 and 5964.

And it further appearing from the receiver's receipt of March 13th, 1903, and master's report that after the first draft of the master's report the said L. D. Carter turned over to the receiver ten of said Kentucky Central bonds with the coupons from July, 1903, inclusive attached thereto, said bonds being numbered from 3789 to 3798, inclusive.

It is ordered and decreed that said I. S. Carter shall forthwith turn over and deliver to the receiver, the said One Michigan Telephone Company bond and One Kentucky Central R. R. Co. bond, with the coupons maturing after September 1st, 1901, thereon, or proceeds of said coupons if collected.

It is further ordered and decreed that said L. D. Carter shall forthwith turn over and deliver to the receiver the said eleven Kentucky Central bonds remaining in his hands, with the coupons maturing after September 1st, 1901, thereon, or proceeds of said coupons, if collected, together with the coupons of the ten Kentucky Central bonds maturing January and July, 1902, and January, 1903, or the proceeds thereof, if collected, which bonds were turned over to the receiver on March 13th, 1903, without said coupons of January and July, 1902, and January, 1903, so maturing after the agreement and order of November 6th, 1901.

(3) It is further ordered and decreed that when I. Stanton Carter and Lorenzo D. Carter shall have complied with the foregoing provisions of this decree, that they will have sufficiently accounted to the receiver as far as they should be required on this interlocutory proceeding for the assets remaining in their hands, to put in operation clauses One (1), Seven (7) and Eight (8) of the agreement of November 6th, 1901.

(4) The questions raised on the exceptions of the United States to alleged excess expenses allowed by the master to I. S. Carter and L. D. Carter, and exceptions to the alleged excess of credit allowed by the master to L. D. Carter for amounts claimed as paid to J. H. Winkler, and exceptions as to the liability to the United States of I. S. Carter and L. D. Carter to account for assets in controversy traced into their hands and which they claimed before the master not then

to have, as well as the questions raised by the exceptions of defendants to certain items of debit charged by the master to them, and to certain items of credits which they claim in their exceptions that the master should have given them in stating their account, and the proper restatement of said account, are all not finally passed on herein, but are reserved for the decree of the court on the merits of the cause on final hearing, and further argument of counsel, with leave to either party to take and offer additional evidence.

And on to-wit: the 7th day of January, 1904, in the December term, 1903, of said court, in the record of proceedings thereof, in said entitled cause before the Honorable Christian C. Kohlsaat, judge presiding, there was made by the court, the following order and entry thereof:

ORDER APPOINTING R. H. WYMAN SPECIAL EXAMINER.

United States of America
against
Oberlin M. Carter, *et al.*
} In Equity.
Bill, Etc.

It is ordered by the court, that Richard H. Wyman, Esq., of Chicago, Illinois, be and he is hereby appointed a special examiner to take and report such evidence as either party may offer before him agreeably to the provision of Sixty-seventh Equity Rule. Said Special Examiner may take said evidence stenographically and report the same in typewriting. It shall not be necessary to have the witnesses whose examination is taken sign the testimony so reported, but either party may before the said testimony is reported to the court recall any witness for the purpose of taking his further examination, correcting any errors claimed to have been made.
Assented to:

MARION ERWIN,
Sp. Asst. Atty. Gen'l. for Complt.
HORACE G. STONE,
Solr for Carters.

And on towit: the 28 day of November 1905 in the July term 1905 of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat Judge presiding, there was made by the Court, the following order and entry thereof:

ORDER APPOINTING GEORGE W. BURGOYNE SPECIAL EXAMINER.

United States of America,
vs.
Oberlin M. Carter, *et al.*
} Bill etc. No. 25980.

Present: Hon. Christian C. Kohlsaat.

By agreement of parties it is ordered by the court that George W. Burgoyne, of Chicago, be and he is hereby appointed a special examiner in said cause, with authority to take and report the evidence agreeably to the 67th Equity Rule, in the above stated cause, the intent of this order being to enable said George W. Burgoyne to assist Richard H. Wyman as the examiner heretofore appointed in said cause, in the taking and reporting of testimony herein, the said testimony to be taken stenographically and reported, it being further intended that the one examiner may conduct the examination in the absence of the other, so that the testimony can be taken up and reported rapidly by the said examiners alternating in the work. Said testimony may be embodied in one record and covered by a joint certificate from the said examiners.

Agreed to
MARION ERWIN
Special Asst to Atty Gen'l
HORACE G. STONE
Solr for Carters

And on towit: the 8th day of December 1905 came the complainant by Marion Erwin its Solicitor, and filed in the clerk's office of said court a petition in the words and figures following to-wit:—

PETITION FOR LEAVE OF ABSENCE OF COMPLAINANT'S SOLICITOR, AND FOR LEAVE TO WITHDRAW DOCUMENTS TEMPORARILY FOR USE IN CRIMINAL TRIAL.

In the Circuit Court of the United States, For the Northern District of Illinois, Eastern Division.

The United States
vs
O. M. Carter *et al.* } In Equity, Bill & C.

To the Judges of said Court.

The petition of the United States by Marion Erwin, Special Assistant to the Attorney General, its Solicitor of record respectfully shows:—

(1) That since September 18th last to the present time, some two months and a half, the defendant O. M. Carter, has been engaged almost continuously from day to day (with the exception of two intermissions, aggregating about three weeks) in taking testimony on part of the defense in the above stated case before an Examiner of this Court, and has during that period taken a large mass of testimony. That on December 4, instant, defendant's counsel notified Petitioner's Counsel of his intention of announcing the closing of taking evidence for the defense when the cross-examination of the last witness being cross-examined by complainant should be completed, said notification being tentative and with reservations.

That it is expected that this cross-examination will be completed to-day.

(2) That it will be necessary for the complainant to take in rebuttal, the testimony of a number of different witnesses, mainly army officers, whose residences are widely scattered over the United States.

(3) That on October 7th last, Benjamin D. Greene and John F. Gaynor, who are charged criminally on indictments pending in the Southern District of Georgia, with fraud and conspiracy with O. M. Carter, in and about the same matters involved in the above stated cause, were extradited from Canada, and lodged in Jail at Savannah, Georgia, to await trial. That said Greene and Gaynor have been held in Jail either in Canada, or since then in the United

States, ever since March 4th last. That the trial of said criminal case has been set for trial in the United States District Court, at Savannah, for January 9th, proximo.

(4) That petitioner's Attorney, Marion Erwin, has been in charge of said criminal proceedings from their first institution and his attendance to conduct said trial as prosecuting attorney is essential to the due administration of justice in said criminal proceedings.

(5) That there is a large mass of documentary evidence which has been offered in Evidence in the above stated Civil Cause which it is essential in the due administration of justice, should be offered in evidence on the part of the prosecution of said criminal cases in said District Court. That most of said documentary evidence has been transcribed into the record of this cause by the several Examiners and the original documents held subject to inspection, by agreement of counsel in this cause have been left in the custody of Mr. Edward I. Johnson, who was appointed Custodian of the Court-Martial Proceedings and Records by the Attorney General on his review of that Record and who has been Official Custodian for the Government of all the Records pertaining to the case ever since that time.

(6) Therefore Petitioner Prays:—

(a) That the Court will grant leace of absence to its Solicitor, Marion Erwin so as to be excused from taking testimony in said Civil Cause until he can conclude said criminal trial set for January 9th, proximo.

(b) That the Court will permit Mr. Edward I. Johnson as Custodian for the Government to withdraw from Chicago for use at said criminal trial, the original documents pertaining to said case, said documents to be brought back to Chicago for the further purposes of these civil proceedings when said criminal trial is concluded.

Dec. 8th, 1905.

MARION ERWIN,
Special Asst. to Atty. Gen'l.
Comp's. Solicitor.

Endorsement Filed Dec 8, 1905 Marshall E. Sampsell, Clerk.

And on towit: the 8th day of December 1905 in the July term 1905 of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat Judge presiding, there was made by the Court, the following order and entry thereof:

ORDER GRANTING LEAVE OF ABSENCE TO COMPLAINANT'S SOLICITOR, AND LEAVE TO WITHDRAW PAPERS FOR USE IN CRIMINAL CASE, AND ORDER TO CLOSE TESTIMONY.

The United States of America
vs
Oberlin M. Carter *et al.* } Chancery 25980.

Now come the parties by their solicitors and leave is given the complainant to withdraw certain papers introduced in evidence herein for use in a certain criminal case, pending in Georgia, and on motion of the defendant's counsel the United States is ruled to close its rebuttal proofs herein by January 9th, 1906, the defendant's solicitor having announced in open court that their testimony has been substantially closed with the exceptions of certain documentary evidence to be offered herein.

And on towit: the 11th day of December 1905 in the July term 1905 of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat Judge presiding, there was made by the Court, the following order and entry thereof:

ORDER APPOINTING R. H. WYMAN EXAMINER TO SIT IN OTHER DISTRICTS.

United States of America
vs.
Oberlin M. Carter *et al.* } In Equity

Bill &c. Pending Northern District of Illinois auxiliary bills pending in other Districts

On agreement of parties it is ordered by the Court that Richard H. Wyman, appointed Special Examiner by this court by order entered January 7th, 1904, be and is hereby

authorized and empowered to have his sittings and exercise the powers of such examiner in taking and reporting evidence for use in said cause in the Southern District of New York and at such other places outside of the Northern District of Illinois which the parties may agree upon, as may be convenient for taking such evidence. This order is not intended to prevent the parties from taking testimony before other officers or other authority as heretofore, but merely to be cumulative.

Consented to Dec 9th 1905

MARION ERWIN
Sp. Asst to Atty Genl Compt Sol.
HORACE G. STONE
Solr for Carters

And on towit: the 8th day of May 1906 came the defendants by H. G. Stone their solicitor and filed in the clerk's office of the said court, a notice in the words and figures following towit:—

NOTICE TO COMPLAINANT'S SOLICITOR OF INTENTION TO MOVE SETTING OF CAUSE FOR TRIAL.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

United States of America *Complainant,*
vs.
Oberlin M. Carter *et al.* *Defendants.*
} In Equity.

To Marion Erwin, Solicitor for the Complainant:

Please take notice that on Tuesday the Eighth day of May, 1906, before his Honor Christian C. Kohlsaat, Circuit Judge of said Court at his court room in the City of Chicago at Ten (10) o'clock in the forenoon, or as soon thereafter as counsel can be heard, I shall apply for an order setting the above entitled case for trial at a day certain, and for an order requiring the examiner to proceed forthwith to correct the testimony of the witnesses Oberlin M. Carter, William H. Bixby, Lyman E. Cooley, Charles McPherson and

Robert Nelson, and for an order on the examiner to report the entire testimony and evidence without delay.

Said motion will be based upon the following:

(a) Upon your delays in said cause.

(b) Upon the facts that you have made many charges in said bill of complaint which you have abandoned, and which said charges ought to be disposed of at once.

(c) Upon the fact that some of the chief witnesses for the complainant appear upon the record to have perjured themselves over and over again, and any delay would result in shielding said witnesses and in injuring the defendants.

Dated Chicago April 28, 1906.

HORACE G. STONE,
Solicitor for Defendants Carter.

Received a copy of the above notice this 28th day of April A. D. 1906.

C. B. MORRISON,
United States Atty.
Per J. F. WESTALL,
Clerk.

Endorsement Filed May 8, 1906 Marshall E. Sampsell Clerk

And on towit: the 8th day of May 1906 in the December term 1905 of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat Judge presiding, there was made by the Court, the following order and entry thereof:

ORDER SETTING CAUSE FOR FINAL HEARING FOR JUNE 12, 1906.

United States of America,
vs
Oberlin M. Carter. } Chancery. 25980.

On motion of the defendant's solicitor and upon notice to the complainant's counsel, It Is Ordered that this cause be set for final hearing on June 12th next.

And on towit: the 24th day of July 1906 in the July term 1906 of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat Judge presiding, there was made by the Court, the following order and entry thereof:

ORDER POSTPONING HEARING TO AUGUST 29th, 1906.

The United States of America
vs.
Oberlin M. Carter *et al.* } 25980. Chancery.

By agreement of counsel, It Is Ordered that the final hearing of this cause be postponed to August 29th, 1906.

And on towit: the 28th day of August 1906 in the July term 1906 of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat Judge presiding, there was made by the Court, the following order and entry thereof:

ORDER POSTPONING HEARING TO SEPTEMBER 18th, 1906.

United States of America
vs.
Oberlin M. Carter *et al.* } 25980

Upon motion of the complainant, the defendant being present, it is ordered by the court that the hearing of this cause on pleadings and proofs be postponed until Tuesday, September 18th, 1906, at 10 o'clock A. M.

And on towit: the 18th day of September 1906 in the July term 1906 of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat Judge presiding, there was made by the Court, the following order and entry thereof:

HEARING IN PART AND POSTPONEMENT TO SEPTEMBER 19th, 1906.

United States of America
vs.
Oberlin M. Carter *et al.* } Chancery. 25980.

Now come the parties by their solicitors and thereupon this cause is set down for hearing on pleadings and proofs, and the same being heard in part is postponed until tomorrow morning.

And on towit: the 19th day of September 1906 in the July term 1906 of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat, Judge presiding, there was made by the Court, the following order and entry thereof:

HEARING IN PART AND POSTPONEMENT TO SEPTEMBER 20th, 1906.

United States of America,
vs.
Oberlin M. Carter *et al.* } Chancery. 25980.

Now again come the parties by their solicitors and the trial of this cause is resumed; and the time for adjournment having arrived the further hearing of this cause is postponed until tomorrow morning.

And on towit: the 20th day of September 1906 in the July term 1906 of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat Judge presiding, there was made by the Court, the following order and entry thereof:

HEARING IN PART, POSTPONEMENT TO SEPTEMBER 21ST, 1906.

United States of America,
vs.
Oberlin M. Carter *et al.* } Chancery. 25980.

Now again come the parties by their solicitors and the trial of this cause is resumed, and further evidence being heard the trial of this cause is postponed until tomorrow morning.

And on to-wit: the 21st day of September 1906 in the July term 1906 of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat Judge presiding, there was made by the Court, the following order and entry thereof.

HEARING IN PART AND POSTPONEMENT TO SEPTEMBER 26TH, 1906.

United States of America,
vs.
Oberlin M. Carter, *et al.*
} Chancery. 25980.

Now again came the parties by their solicitors and the trial of this cause is resumed and further arguments being heard and not concluded the trial of this cause is postponed until Wednesday morning next.

And on towit: the 26th day of September 1906 in the July term 1906 of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat Judge presiding, there was made by the Court, the following order and entry thereof:

HEARING IN PART AND POSTPONEMENT TO SEPTEMBER 27TH 1906.

United States of America,
vs.
Oberlin M. Carter *et al.*
} Chancery. 25980.

Now again come the parties by their solicitors and the hearing of this cause is resumed and not being concluded when the hour for adjournment arrived, the further hearing is postponed until tomorrow morning.

And on towit: the 27th day of September 1906 in the July term 1906 of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat Judge presiding, there was made by the Court, the following order and entry thereof:

HEARING IN PART AND POSTPONEMENT TO SEPTEMBER 28TH, 1906.

United States of America,
vs.
Oberlin M. Carter *et al.* } Chancery. 25980.

Now again come the parties by their solicitors and the further hearing of this cause is resumed and not being concluded when the adjourning hour arrived, the further hearing is postponed until tomorrow morning.

And on towit: the 28th day of September 1906 in the July term 1906 of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat Judge presiding, there was made by the Court the following order and entry thereof:

HEARING IN PART AND POSTPONEMENT TO OCTOBER 1ST, 1906.

United States of America,
vs.
Oberlin M. Carter *et al.* } Chancery. 25980.

Now come the parties by their solicitors and the trial of this cause is resumed, and further arguments being heard the trial of this cause is postponed until Monday next at two o'clock P. M.

And on towit: the 1st day of October 1906 in the July term 1906 of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat Judge presiding, there was made by the Court the following order and entry thereof.

HEARING IN PART AND POSTPONEMENT TO OCTOBER 2ND, 1906.

United States of America,
vs.
Oberlin M. Carter *et al.* } Chancery. 25980.

Now again come the parties by their solicitors and the trial of this cause is resumed, and further arguments being heard and not concluded when the adjourning hour arrived, the further hearing is postponed until tomorrow morning.

And on towit: the 2nd day of October 1906 in the July term 1906 of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat Judge presiding, there was made by the Court, the following order and entry thereof:

HEARING CONCLUDED. ORDER TAKING CAUSE UNDER ADVISEMENT.

United States of America
vs.
Oberlin M. Carter *et al.* } 25980.

Now again come the parties by their attorneys and the trial of this cause is resumed, and the arguments of counsel being heard and concluded, and the Court not being sufficiently advised in the premises, takes time to consider.

And on towit: the 10th day of February 1908 in the December term 1907 of said Court, in the record of proceedings thereof; in said entitled cause before the Honorable Christian C. Kohlsaat Judge presiding, there was made by the Court the following order and entry thereof:

HEARING ON SETTLEMENT OF DECREE.

Motion to enter decree extended to Feby. 11, 1908.

And on towit: the 21 day of February 1908 in the December term 1907 of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat Judge presiding, there was made by the Court the following order and entry thereof:

HEARING ON SETTLEMENT OF DECREE.

Motion of complainant to settle decree heard in part and postponed until 10 A. M. February 24, 1908.

And on towit: the 24th day of February 1908 in the December term 1907 of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat Judge presiding, there was made by the Court the following order and entry thereof:

HEARING ON SETTLEMENT OF DECREE.

Motion to settle decree heard in part and continued.

And on towit: the 13th day of April 1908 in the December term 1907 of said Court, in the record of proceedings thereof, in said Entitled Cause before the Honorable Christian C. Kohlsaat Judge presiding, there was made by the Court the following order and entry thereof:

HEARING ON SETTLEMENT OF DECREE CONCLUDED.

Hearing of arguments as to fees concluded, decree to be prepared.

ADMINISTRATIVE ORDERS, ETC.

And on towit: the 22nd day of November 1902 in the July term 1902 of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat Judge presiding, there was made by the Court, the following order and entry thereof:

ORDER TO PAY MAX H. WHITNEY, RECEIVER, $1000.

United States of America
v.
Oberlin M. Carter *et al.* } No.

Upon motion of the receiver herein, Max H. Whitney, and in pursuance of the consent of the solicitors of the complainant and defendants herein given in open court,

It Is Ordered that the said receiver be, and he is hereby, authorized to pay to himself out of the funds in his hands as such receiver, the sum of one thousand dollars on account of receiver's fees herein.

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HORACE G STONE
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MARION ERWIN
Special Asst to Atty Gen'l

And on to wit: the 18th day of December, 1902, in the December term, 1902, of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat Judge presiding, there was made by the Court, the following order and entry thereof:

ORDER TO PAY G. R. LEONARD, STENOGRAPHER, $235.45.

United States of America
vs.
Oberlin M. Carter *et al.* } Bill, etc.

Reference to William M. Booth, Esq., Special Master. Order as to payment of stenographers' fees.

G. Russell Leonard, stenographer, having rendered his bill, approved by the above named special master, for taking and reporting testimony on the above reference, as follows:

For taking and reporting testimony for Master	$141.00
For copy furnished to counsel for United States	42.30
For copy furnished to counsel for defendants (2)	52.15
Total	$235.45

it is, by agreement of counsel, ordered by the court that the said sum of $235.45 be paid by the receiver out of the fund in his hands to the said G. Russell Leonard, and his receipt therefor be filed with the receiver.

It is further ordered, by agreement of counsel, that the adjustment of the said payments as between the parties be reserved for future consideration and action of the court.

Consented to

MARION ERWIN,
Sp. Asst. to Atty. Gen'l., Counsel for Plff.
HORACE G. STONE,
Solr. for Carters.

Approved
WILLIAM BOOTH,
Master, etc.

And on to wit: the 27th day of April 1903 in the December term 1902 of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat Judge presiding, there was made by the Court, the following order and entry thereof:

ORDER TO PAY WM. M. BOOTH, MASTER, $750.

United States of America
vs.
Oberlin M. Carter *et al.*
} In Equity Bill, etc.

On agreement of parties, evidenced by signatures of counsel hereto, It Is Ordered by the Court that Max H. Whitney, Receiver in the above stated cause, pay to William M. Booth, Master, the sum of Seven Hundred and Fifty Dollars ($750.00) out of the funds in hands of said Receiver, in full payment of the services of the said Master on reference to him heretofore made in this cause, the right to adjust the said payment as costs between parties on the final decree being reserved.

Assented to:
MARION ERWIN,
Special Asst. to Atty. Gen'l.
H. G. STONE,
Solr. for Carters.

And on to wit: the 8th day of June, 1903, in the December term, 1902, of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat, Judge presiding, there was made by the Court, the following order and entry thereof:

ORDER FOR RECEIVER TO PAY INSURANCE PREMIUM.

United States of America
vs.
O. M. Carter *et al.*
} In Equity, Bill, etc. 25980.

It is ordered by the court, that Max H. Whitney, Receiver, pay the sum of four hundred and fifty three and 00/100 dollars to the Equitable Life Assurance Association for premium falling due on or about June 7, 1903, on policy No. 743,543 in said company on Life of Oberlin M. Carter out of the funds in his hands as Receiver.

The payment to be made without prejudice to the adjust-

ment of the amount so paid between the parties to the suit hereafter.

Agreed to June 2, 1903.

MARION ERWIN,
Special Asst. to Attorney General.
HORACE G. STONE,
Solr. for Carters.

And on to wit: the 6th day of February, 1904, in the December term, 1903, of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat, Judge presiding, there was made by the Court, the following order and entry thereof:

ORDER TO PAY MAX H. WHITNEY, RECEIVER, $1000.

United States of America
v.
Oberlin M. Carter *et al.* } No.

Upon motion of the receiver herein, Max H. Whitney, and in pursuance of the consent of the solicitors of the complainant and defendants herein given in open court,

It Is Ordered that the said receiver be, and he is hereby, authorized to pay to himself out of the funds in his hands as such receiver, the sum of one thousand dollars on account of receiver's fees herein.

And on to wit: the 10th day of February, 1904, came Horace G. Stone, Solicitor for O. M. Carter, and filed in the clerk's office of said court, a petition in the words and figures following to wit:

PETITION OF H. G. STONE FOR ALLOWANCE OF ATTORNEYS FEES ON ACCOUNT.

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

United States of America,
Complainant
—against—
Oberlin M. Carter *et al.*,
Defendants.
} In Equity.

To the Honorable Christian C. Kohlsaat, Judge of said Court:

Your petitioner, Horace G. Stone, respectfully shows unto your Honor that since and prior to the sixth day of November, 1901, he has been at all times, and now is, the Chief Counsel for said Defendant, Oberlin M. Carter in the above entitled cause, and in the other causes pending in equity elsewhere between the same parties. That during said period he has spent a large part of his time in the above entitled causes, and has done everything possible to look after the interests of his client, and at the same time to expedite the final disposition of the case.

Your petitioner further shows that the complainant has just closed its evidence in the above entitled cause, and that the taking of said evidence has not only been a matter of great labor for the complainant, but has also been a matter of great labor for your petitioner. The testimony, exhibits, etc., already introduced in evidence by the complainant amount, as near as your petitioner can estimate, to an equivalent of more than twenty thousand ordinary pages, which include several hundred exhibits, some of which are the creations of the witnesses for the complainant and are very large in size, very complicated in their structure, and very extensive in the number of sheets therein, and your petitioner has been obliged to examine substantially all of the same with the greatest care, and it has taken great labor.

Your petitioner could give numerous instances indicating the great amount of labor in the said cause, but your Honor is more or less familiar with the same, and your petitioner does not deem it necessary to do so.

Your petitioner further shows that on November 6th, 1901, the complainant of the one part, and the defendant, Oberlin M. Carter, of the other part made a written agreement which

has since its date become an order of court herein, by the terms of which certain money and property belonging to said Oberlin M. Carter should be turned over to the Receiver herein to abide the decision of this Court, and that said Oberlin M. Carter agreed therein to do certain other things. Since the making of said agreement the same has been complied with, so as to put in operation certain provisions of said agreement, by the terms of which, among other things, your petitioner is entitled to be paid from time to time for his services as Chief Counsel for said Oberlin M. Carter in said litigation out of said fund in court.

Your petitioner has not received any pay for his services since the making of said contract of November 6th, 1901, and respectfully requests that the Court allow to him at the present time a reasonable sum on account of his said services, but not in full for his services to present date or to any other date.

Dated Chicago, February 10th, 1904.

HORACE G. STONE.

Endorsement: Filed February 10, 1904, Marshall E. Sampsell, Clerk.

And on to wit: the 10th day of February, 1904, came Frank P. Blair, attorney for O. M. Carter and filed in the Clerk's office of said Court a petition in the words and figures following to wit:

PETITION OF FRANK P. BLAIR FOR ALLOWANCE OF ATTORNEY'S FEES.

United States of America
vs.
Oberlin M. Carter *et al.*
} In Chancery. 25980.

The Petition of Frank P. Blair, Esq., local solicitor for the above named Oberlin M. Carter in this jurisdiction, for compensation.

To the Hon. C. C. Kohlsaat, Judge of the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

Your petitioner, Frank P. Blair, respectfully shows unto your Honor that heretofore in December, 1897, he was retained by the above named Oberlin M. Carter, who was then

a Capt. of the U. S. Engineer Corps, to defend him, the said Carter, in certain proceedings before a Court Martial of the U. S. Army to be convened at Savannah, Ga. That pursuant to said retainer, your petitioner repaired to said City of Savannah and on or about the 12th day of January, 1898, entered into the defense of said Carter before a Court Martial of the United States Army, duly convened at said City of Savannah, at said date. That your petitioner conducted the defense of said Carter before said Court Martial during the period of about four months. That said Court Martial convicted the said Carter and sentenced him to pay a fine of $5,000.00 to be dismissed from service and degraded and to suffer an imprisonment of five years. That thereafter your petitioner in conjunction with the Hon. Wayne MacVeagh appeared before the then attorney General of the United States at the suggestion of the late Pres. McKinley, whose consent thereto was procured largely by your petitioner, and made elaborate argument before said Attorney General to the end that the proceedings in said Court Martial should be set aside and annulled. That thereafter the verdict of said Court Martial having been affirmed, your petitioner prepared certain proceedings in habeas corpus before the Circuit Court of the United States for the Eastern District of Kansas; whereat your petitioner made an elaborate argument before the Hon. Judges Thayer and Hook; and the said Carter having been remanded, your petitioner appealed said cause to the Supreme Court of the United States and there argued the same at length.

Your petitioner further avers that in the trial of said cause many questions arose involving recondite principles of hydraulic engineering, particularly with respect to the South Eastern Coast of the United States. That petitioner was somewhat prepared to meet such questions by reason of the fact that he is a graduate of the United States Military Academy at West Point; and that he was constantly coached during said Court Martial trial by the said Carter.

By reason of the foregoing, petitioner respectfully suggests unto your Honor that he is peculiarly familiar with the evidence and the various phases of the case against said Carter now pending in this Court.

Petitioner further says that since the contract and order of this court, entered on or about Nov. 6, 1901, he has been in constant communication, verbally and otherwise, with said Carter, and with the leading counsel in this cause, Horace

G. Stone, Esq.; that he has at all times rendered to said Stone such information with respect to said case as was within his knowledge; that he has had numerous consultations with said Stone, and together he and petitioner have gone over many phases of said case.

Petitioner further avers that during all of said time since Nov. 6, 1901, he has diligently prepared himself for the trial of said cause, and has devoted thereto, roughly speaking, about 1/4 of his working time.

Wherefore, the premises being considered, petitioner respectfully shows unto your Honor that he verily believes his services heretofore rendered since said contract and order are reasonably worth the sum of not less than $5,000.00; which he prays may be allowed him.

And your petitioner will ever pray.

FRANK P. BLAIR,
Solicitor for Defendant, O. M. Carter.

Endorsement: Filed Feby. 10, 1904. Marshall E. Sampsell, Clerk.

And on to wit: the 13th day of February, 1904, came the complainant by Marion Erwin, its solicitor, and filed in the clerk's office of said Court, an answer to the petition of Frank P. Blair, in the words and figures following to wit:

ANSWER OF UNITED STATES TO PETITION OF F. P. BLAIR.

In the Circuit Court of the United States for the Northern District of Illinois.

The United States of America	In Equity.
v.	Bill, etc., 25,980.
Oberlin M. Carter *et al*	

Answer of United States to Petition of Frank P. Blair for fees.

The answer of the United States of America, by Marion Erwin, Special Assistant to the Attorney General, to the petition of Frank P. Blair for allowance of fees as Attorney for Oberlin M. Carter, avers:

(1) These respondents to said petition admit, that said Frank P. Blair was one of the attorneys who represented said

Oberlin M. Carter in the Court Martial trial referred to in said petition, but they aver that he was not the only attorney who represented said Carter in said Court Martial trial; that said Carter was represented also in said trial by Abram J. Rose of the firm of Kellogg & Rose, attorneys of New York, by W. G. Charlton of the firm of Charlton, Mackall & Anderson, attorneys of Savannah, Georgia, who were all paid separately large fees.

(2) These respondents admit that said Frank P. Blair was one of the attorneys who appeared for O. M. Carter before the Attorney-General on the proceedings to review said Court Martial findings, and it admits that Wayne McVeigh also appeared for said Carter in that proceeding. But these respondent aver from information derived from R. E. Westcott and J. H. Paul, the agents of said O. M. Carter, in New York, and from the entry on the books of account of said R. E. Westcott, now to the Court shown, of Wayne McVeigh's check returning the money, that the said McVeigh, after the affirmance of said Court Martial sentence by the President, returned said fee which had been so paid him by said Carter to said Carter's agents.

(3) These respondents admit that said Frank P. Blair was one of the attorneys who represented said O. M. Carter in the Habeas Corpus proceedings at Kansas City and on the appeal of same to the Supreme Court of the United States.

(4) But these respondents aver that said Frank P. Blair received as compensation for his services in the various proceedings in which he represented said Carter, over Forty Thousand Dollars, from the proceeds of Government funds, fraudulently diverted to his own use by the said O. M. Carter, as charged in complainants' bill, and as is now fully shown by the evidence already taken in this cause, and which the complainants are ready to submit to the Court for its final judgment on the merits, as soon as the said defendants are ready, recognizing the right of the defendants, however, to have a reasonable time to meet the Government's case, if they can.

Respondents attach hereto as Exhibit "A" an abstract from a statement rendered to these respondents (after certain proceedings had in this Court), by the said Blair from his books; and from the affidavits of said Blair in the record, now to the Court shown, showing that the said Blair has received said sum of over Forty Thousand Dollars. And complainants

now tender for the inspection of the Court in this proceeding all the evidence already taken in the cause, showing that said sum—exceeding Forty Thousand Dollars—so received and retained by said Blair was from the proceeds and re-investments made by said Carter from the funds of the Government so fraudulently diverted by him as aforesaid.

(5) That said Blair not only had a knowledge of the frauds perpetrated upon the Government by the said Carter, as charged in complainants' bill, but he had actual notice that Carter testified in said Court Martial proceeding (which is in evidence in this cause) that he (Carter) had no property or income except his income as officer of the Government, and a small amount he made on outside engineering work, and a small amount (something in excess of $1000.00) he received from his father's estate, all of which was not sufficient to make him self-supporting so far as his family was concerned—save and except the gifts he claimed he had received from his father-in-law, Robert F. Westcott, mainly after the death of Carter's wife.

Respondents aver that said Blair was present at a portion of the commitment trial had before Commissioner John A. Shields, in New York, in the summer of the year 1900, for removal of Benjamin D. Greene and John F. Gaynor to answer, in Georgia, for the crime of conspiracy with Oberlin M. Carter in the frauds charged in complainants' bill,—the record and evidence in which proceeding is now in evidence in this cause. That on January 26th, 1901, the said Blair published and circulated a printed pamphlet, a copy of which is now to the Court shown, in which the said Blair undertakes to review the testimony of said R. F. Westcott before the said Commissioner, in which testimony said Robert F. Westcott flatly denied that he had given said O. M. Carter the large sums of money claimed by said Carter as having been received as gifts from said Robert F. Westcott, and in which circular the said Blair takes the position that said testimony of said Robert F. Westcott is "unqualifiedly false."

And these respondents say, that whether the said Blair believed that the testimony upon which said Carter was convicted by the Court Martial was false; whether he believed the testimony of said Robert F. Westcott to be false; whether he believed that the finding of probable cause of guilt by the Commissioner was based on false testimony, is immaterial so far as the said proceedings must be held to be sufficient to charge the said Blair with notice of the claims of the Govern-

ment, and to subject all his rights and dealings with the property as of a person with full notice, to the final adjudication of this Court on the merits of the case, when the Court shall be ready to decide the main issues on the merits.

(6) And these respondents aver that even after September 29, 1899, the date of the confirmation of the said Court Martial sentence by the Attorney-General and the President, the said Blair received and retained over Twenty Thousand Dollars from the proceeds of said diverted funds, over Ten Thousand Dollars of which was received by said Blair after the testimony of said Robert F. Westcott was given.

(7) And these respondents further aver that, while these respondents were engaged in establishing, in the Greene-Gaynor removal proceedings in New York, the identity of the particular securities in which said Oberlin M. Carter had invested his share of the funds of the Government so fraudulently diverted by him, a large part of said securities aggregating over Four Hundred Thousand Dollars which were then in the hands of J. H. Paul, Carter's agent in New York (though the fast was then unknown to your orators) were secretly, on May 23, 1900, turned over to said Oberlin M. Carter's two brothers, D. P. Carter, of Huntington, West Virginia, and I. Stanton Carter, in Chicago. That the said securities were divided between the said two brothers to be held for the said Oberlin M. Carter, then in the penitentiary.

That the said Blair proceeded to act as agent for the said I. Stanton Carter in marketing in his, Blair's, name a large quantity of the said securities, retaining from the proceeds thereof large sums of money as fees for himself. The following transactions with said securities were had by the said Blair as admitted by him in his affidavit in the record, and otherwise shown in the record.

On May 29, 1900, he sold of said securities, in his own name, through A. O. Slaughter & Co., Chicago, bonds, the proceeds of which were $11,950.00, retaining himself for fees and charges claimed to be due him, $6,200.00, and turning over to said I. Stanton Carter, $5,750.00.

On September 4, 1900, he sold of said securities, in his own name, through A. O. Slaughter & Co., Chicago, bonds, the proceeds of which were $20,362.50, retaining himself for fees and charges claimed to be due him $5,000.00, and turning over to said I. Stanton Carter, $15,362.50.

On October 15, 1900, he sold of said securities, in his own name, through Knight, Donnelley & Co., Chicago, bonds, the

proceeds of which were $11,007.50, all of which proceeds were turned over to one C. W. Colehour for his note payable to I. Stanton Carter, secured by an assignment of a judgment, after numerous other assignments of the same had already been made to other persons, and which these respondents are informed by the receiver is practically worthless, or of problematical value—the said Colehour being at the time and now, as these respondents are informed, a client of the said Blair.

With all these larger amounts of said securities converted into cash, and the proceeds (not used by said Blair) held by I. Stanton Carter in safety vaults in Chicago, as shown by the evidence already taken in this cause, and with over $146,000.00 of the securities held by the other brother in West Virginia, sold and converted into gold certificates and hid in a bank vault in Huntington, West Virginia, as shown by the evidence in this cause:—the said Blair aided the said Oberlin M. Carter in negotiating a loan of $22,005.27 by a mortgage on a certain piece of real estate in New York, referred to in the bill in this cause, as "The 8th Avenue property," then standing in the name of O. M. Carter, and, on November 23, 1900, the said Blair deposited to his own credit in the Northern Trust Company of Chicago the money so borrowed, $22,005.27, and retained therefrom $2,005.27 for fees and charges claimed by him, turning over the balance thereof to I. Stanton Carter.

On May 15, 1901, the said Frank P. Blair received from L. D. Carter, uncle of said Oberlin M. Carter, $6,000.00, from the proceeds of certain of the said securities put by I. Stanton Carter in the hands of the said uncle, and the said Blair retained the same on claim of fees and charges due him.

(8) By reason whereof these respondents say that the said Frank P. Blair now illegally retains or has spent over Thirty Thousand Dollars of the funds rightfully belonging to these respondents, which were received by him since the conviction of said Oberlin M. Carter, and since the said Blair was put on full notice of the fraudulent diversion of said funds by the said Oberlin M. Carter.

And these respondents pray that the amount of said trust funds so appropriated by the said Frank P. Blair, with notice of said frauds and of the rights of these respondents, be set off against any and all claims, if any he has, on the fund in Court now awaiting the final judgment of this Court on the merits for its proper disposition, and that these respondents

have judgment against the said Blair in and for the same to the full extent of the fund so appropriated by him.

(9) And for further answer to said petition, these respondents say and aver, that Section '8" and clause "a" thereof in the agreement of November 6, 1901, fairly construed, means:

(a) (1) That the traveling and other expenses of counsel while engaged in work on the case are to be paid from time to time as they occur, and accounts therefor are rendered, and determined to be just by the Court.

(a) (2) That the fees of counsel for services in the cause to be rendered after the date of the agreement, were to be paid out of the fund when the cause reached a determination on its merits, and were to be fixed in amount according as the record showed that means and methods were adopted by counsel to ensure a speedy and just determination.

And these respondents say and aver that the name of Frank P. Blair does not appear upon any pleading filed in this cause since the agreement of November 6, 1901. Nor has the said Blair attended any of the proceedings before this Court since November 6, 1901 (except on this application for fees) or before any master or examiner taking evidence during the hearings for taking testimony in the cause, nor has the said Blair attended any such hearing in any of the collateral proceedings in other districts. The said Blair did, after certain of the funds had been traced into his possession, give his own affidavit taken before a notary, giving his statement and explanation of his own transactions.

By reason whereof these respondents say that, aside from the right of these respondents to have the aforesaid setoff, against any claim of the said Blair on the fund in Court, that there is nothing in the agreement of November 6, 1901, and the facts now to the Court shown, which would warrant the Court in making an allowance of fees to said Blair at this stage of the proceedings.

Wherefore, these respondents say that the relief asked for in said petition should be denied.

MARION ERWIN,
Special Assistant to the Atty.-Gen'l., Solicitor for Complts., Respondents Herein.

Receipts of Money for fees and expenses by F. P. Blair for account of O. M. Carter from statements from F. P. Blair's Books and affidavits in the record.

Jany 3. 1898	—Check	$1000.
" " "	Check	1000.
Feby 26 "	Check	1500.
April 5 "	Check	1500.
May 9 "	Check	12250.
Nov 21 "	Cash	500.
Dec 21 "	Cash	500.
June 26 1899.	Cash Greene & Gaynor 750 & 250	1000.
Aug 4 "	Check	1000.
Sep 23 "	Cash on draft	500.
Nov 27 "	Cash	375.
May 29 1900	Balance proceeds of sale of 10 M. N. Y. Lackawanna & Western 5% Bonds	6200.
Sep 24 1900	Balance proceeds of Sale of 15 M. Chicago & North Western 7% Bonds	5000.
Nov 23 1900	Balance proceeds of Mortgage Property 286-8th ave. N. Y.	2005.27
May 15 1901	Exchange from L. D. Carter	6000.
	Rents of Orange N. J. Property from Nov 5, 1900 to June 29, 1901	2134.18
		$42464.45

Deduct

Amounts claimed by Blair Specified in his statement and affidavits in the Record as paid out for expenses and to other people	2320.70
	$40143.75

Endorsement Answer of the United States to the petition of Frank P. Blair for fees. Filed Feb 13, 1904 Marshall E. Sampsell Clerk.

And on towit: the 15th day of February 1904 in the December term 1903 of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat Judge presiding, there was made by the Court, the following order and entry thereof:

ORDER ALLOWING H. G. STONE, COUNSEL FOR O. M. CARTER, $6000.

United States of America
vs.
Oberlin M. Carter *et al.* } In Equity. Bill

In view of the agreement of record in this cause of November 6, 1901, on motion and petition of Horace G. Stone, chief counsel for defendant Oberlin M. Carter, and counsel for the United States not resisting, the allowance on account to said Horace G. Stone of a reasonable attorney's fee out of the fund in Court claimed both by the United States and by said Oberlin M. Carter, to enable said Horace G. Stone properly to make defense of the claims of said Carter to said fund, but without prejudice as to the proper construction of said agreement on future similar applications;

The said allowance to be made at this time is fixed by the Court at the sum of Six Thousand Dollars, and the Receiver, Max H. Whitney, is directed to pay the said sum to the said Horace G. Stone out of the fund in Court.

And on towit: the 28 day of April 1904 in the December term 1903 of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat Judge presiding, there was made by the Court, the following order and entry thereof:

ORDER TO PAY WYMAN, EXAMINER, $406.

The United States of America,
vs
Oberlin M. Carter *et al.* }

By consent of parties, it is ordered by the Court that there be allowed the sum of Four Hundred and Six Dollars ($406.-00) to Richard H. Wyman, Special Examiner, for services as per account rendered to date.

And the Receiver herein is authorized and directed to make payment of same to said Special Examiner out of the funds

in his hands in said cause, this payment to be made subject to adjustment between the parties as costs, on final decree.

Consented to
MARION ERWIN
Sp. Asst to Atty Gen'l
HORACE G STONE
Solr for defts.

In the Circuit Court of the United States. Northern District of Illinois, Northern Division.

The United States of America,
vs.
Oberlin M. Carter *et al.*

Account of Richard H. Wyman, Special Examiner for taking depositions on the part of the United States in said cause, as follows:

Attendance by the Examiner, January 22 and February 4, 5, 16, 17; 5 days,	$15.00
To reporting testimony and transcribing the same; 910 folios, at 15c per folio,	136.50
To making 5 copies for use in other Districts; 910 folios each, at 5c per folio,	227.50
To paid Shea Smith & Co., for 12 Emerson Binders, for large sheet exhibits,	27.00
	$406.00

United States of America.
Northern District of Illinois,
Northern Division. } ss.

Richard H. Wyman, being first duly sworn, deposes and says that the above accounts are just and true.

RICHARD H. WYMAN.

Subscribed and sworn to before me this 27th day of April, A. D. 1904.

EDWARD M. HOLLOWAY
Clerk of the United States Circuit Court of Appeals Seventh Circuit.
Notary Public.

And on towit: the 2nd day May 1904 came H. G. Stone solicitor for O. M. Carter and filed in the clerk's office of said court a certain account of his expenditures, in the words and figures following towit:

ACCOUNT OF H. G. STONE FOR EXPENDITURES $1089.94.

Chicago, March 1st, 1904.

Part of Cash Expenditures by H. G. Stone in re United States of America vs. Oberlin M. Carter et al., Under Agreement Between Said Parties Dated November 6th, 1901.

1901			
Sep.	5	Cash paid S. W. Burnham for two copies of part of bill of complaint in above named case	$ 3.00
	6	Cash paid S. W. Burnham for copy of order in same case	$ 1.00
	27	Expenses to Ft. Leavenworth & return	$ 35.00
	30	Cash paid for telegrams during September	$ .50
Oct.	7	Cash paid for copies of record in U. S. Supreme Court in Carter case	$ 10.00
	29	Cash paid express on package to Ft. Leavenworth	$ .25
	31	Cash paid for telegrams during October	$ 2.13
Nov.	4	Cash paid for copies of record in U. S. Supreme Court in Greene & Gaynor case	$ 5.00
		Expenses to Ft. Leavenworth and return	$ 35.00
	6	Cash paid express on package from Washington	$ 1.45
	14	Express on package to Mr. Rose at New York City	$ .80
	30	Cash paid for telegrams during November	$ 3.59
	26	Expenses to Ft. Leavenworth and return	$ 35.00
Dec.	31	Cash paid for telegrams during December	$ 2.32
1902			
Jan.	16	Cash paid stationery sent Capt. Carter	$ 2.34
	23	Expenses to Ft. Leavenworth and return	$ 35.00
	28	Express on package sent Capt. Carter	$ .60
Feb.	9	Cash paid for telegrams	$ 2.47
	10	Cash paid for blank books etc. sent Capt. Carter	$ 1.50
		Express on same	$ .45

	15	Express on package to Capt. Carter.....	$ .90
	22	Express on papers sent Capt. Carter....	$ 1.80
	25	Express on package sent Capt. Carter...	$ .40
	28	Express on package sent Capt. Carter...	$ .25
Mch.	1	Express on package sent Capt. Carter...	$ 2.00
	10	Cash expended for telegrams during February.....	$ 3.35
Apl.	3	Expenses to Ft. Leavenworth and return	$ 35.00
	14	Express on package to Ft. Leavenworth..	$ 1.00
	15	Cash paid for telegram.....	$ .51
	28	Cash paid for telegrams during March...	$ 1.05
May	26	Paid Barnard & Miller for printing answer of O. M. Carter in case of U. S. vs. O. M. Carter.....	$ 17.25
June	11	Express on package.....	$ 1.15
		Cash paid express on package to Ft. Leavenworth.....	$ 1.00
	16	Cash paid long distance telephone message to Ft. Leavenworth in May.....	$ 5.45
Sep.	30	Expenses to Ft. Leavenworth and return.	$ 35.55
Oct.	6	Cash paid for blank books for Capt. Carter	$ 1.05
	7	Cash paid for punch and eyelets.....	$ 2.10
	20	Express on package.....	$ .25
1902			
Oct.	28	Expenses to Washington and return.....	$ 60.00
Nov.	4	Cash paid for telegrams during October.	$ 1.53
		Express on package to New York.....	$ .55
		Express on package to Ft. Leavenworth.	$ .50
		Expenses to New York and return.....	$ 120.00
	13	Express on package from Ft. Leavenworth	$ .25
	18	Express on package from Ft. Leavenworth	$ .25
	22	Express on package from Ft. Leavenworth	$ .25
	26	Express on package from Ft. Leavenworth	$ .25
	29	Cash paid for telegrams during November	$ 1.62
Dec.	15	Expenses to Ft. Leavenworth and return	$ 35.50
	19	Express on package from Ft. Leavenworth	$ .25
	27	Express on package to Oakland, Ill.....	$ .25
		Express to Ft. Leavenworth.....	$ .35
	31	Cash paid for telegrams during December	$ 2.33
1903			
Jan.	2	Express on package to Ft. Leavenworth.	$ 1.00
	3	Cash expended for messenger.....	$ .50
	8	Express on package to Ft. Leavenworth.	$ .60
		Express on package to Oakland, Ill.....	$ .25

	16 Cash paid F. Reynolds for copying 33 pages of record of Board of Engineers pp. 796 to 817 inclusive, and 836 to 847 @ 15c		
	26 Express on package to Ft. Leavenworth.	$	4.95
Feb.	9 Cash paid M. Fry & Co. for box of carbon paper for Capt. Carter	$	.50
	Cash paid American Writing Machine Co. for Shipman files, stationery, etc. sent Capt. Carter	$	4.00
	19 Cash paid F. Reynolds for copying Master's Report, 60 pages, four carbons	$	15.25
1903			
Feb.	20 Express on package from Ft. Leavenworth	$	10.00
	23 Cash paid for telegrams from Ft. Leavenworth	$	3.25
	To cash paid for telegrams	$	.85
Mch.	5 Expenses to Savannah and return Feb. 23rd to Mch. 5th, 1903	$	.79
	Express on box of papers to Savannah and return	$	132.00
	Paid Shea Smith & Co. for binders for Capt. Carter	$	12.25
	11 Cash paid for telegrams during February	$	3.40
	14 Paid Wm. R. Hewlett, stenographer, for two copies of proceedings at Savannah Feb. 25th, 1903	$	2.02
	Express on package from Savannah	$	60.00
	Express on package to Ft. Leavenworth.	$	.30
	31 Cash paid for telegrams during March	$	.25
Apl.	8 Cash paid for telegrams received from Ft. Leavenworth	$	.25
	11 Cash paid for telegram received from Ft. Leavenworth	$	.67
	30 Cash paid for telegrams during April	$	.55
June	23 Paid Gunthorp-Warren Printing Co. for printing briefs in case of U. S. vs. Carter	$	2.21
	Cash paid for telegram	$	70.00
	Express on package to Ft. Leavenworth.	$	.43
	29 Express on package from Ft. Leavenworth	$	3.70
Aug.	21 Express on package to Ft. Leavenworth	$	.55
		$	.35

Sep.	5	Expenses to Ft. Leavenworth and return.	$ 35.65
	8	Express on package	$ 1.25
		Express on boxes from Ft. Leavenworth.	$ 15.00
1903			
Sep.	21	Expenses to Quebec and New York and Return	$ 195.00
	22	Cash paid for tin box.....	$ 2.00
		Cash paid for books.....	$ 2.16
	29	Cash paid for book.....	$ .25
	30	Cash paid for telegrams.....	$ .85
Nov.	9	Expenses to Ft. Leavenworth and return Nov. 5th	$ 36.65
		Cash paid for files and express on same to Capt. Carter	$ 2.80
	10	Cash paid for express.....	$ .25
	17	Cash paid for express.....	$ .25
	27	Cash paid express on trunk of Capt. Carter	$ 2.13
		Cash paid for telegram.....	$ .49
Dec.	7	Cash paid for telegrams during Nov.....	$ 1.60
		Expressage and car fare.....	$ 1.50
		Cash paid messenger to Capt. Carter's house on Dec. 8th.....	$ .25
		Cash paid messenger to Capt. Carter's house on Dec. 9th.....	$ .25
		Cash paid for blank books.....	$ .80
		Cash paid for car fare to Capt. Carter's house	$ .10
	21	Paid Gunthorp-Warren Printing Co. binding three volumes court proceedings...	$ 3.00
1904			
Jan.	5	Cash expended for blank books.....	$ .76
	9	Cash expended for telegrams during Dec.	$ .86
	12	Paid Hall & Sons, expressage.....	$ 1.00
			$1,147.06
		Less rebate received from Railroad Company on Red Books used when tickets to and from Leavenworth were purchased	$ 57.12
			$1,089.94

Endorsement Filed May 2, 1904 Marshall E. Sampsell Clerk.

And on to wit: the 2nd day of May, 1904, in the December term, 1903, of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat, Judge presiding, there was made by the Court, the following order and entry thereof:

ORDER TO PAY H. G. STONE $1089.94.

The United States of America
vs.
Oberlin M. Carter *et al.*
} In Equity. Bill, &c.

H. G. Stone, chief counsel of record of O. M. Carter in the above stated cause, having rendered and filed herewith an account for his expenses in connection with services rendered in the cause under terms of the agreement of record of November 6, 1901, amounting to One Thousand and Eighty-nine 94/100 Dollars ($1,089.94), the correctness of the items of said account having been conceded by counsel for the United States, the receiver is hereby ordered to pay said sum to the said H. G. Stone. This allowance is without prejudice to the right of said Stone to hereafter present certain other claims for allowance covering the same period which are not presented in the present account by reason of certain objections made by counsel for the United States.

Assented to May 2, 1904.

MARION ERWIN,
Special Asst. Atty. Gen'l.

And on to wit: the 20th day of June, 1904, in the December term, 1903, of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat, Judge presiding, there was made by the Court, the following order and entry thereof.

ORDER FOR RECEIVER TO SELL MICHIGAN TELEPHONE CO. BOND.

United States of America
—against—
Oberlin M. Carter *et al.*
} 25980.

By consent of counsel the Receiver herein, Max H. Whitney, is authorized and empowered to sell for Nine Hundred

and Twenty-five Dollars ($925.00), less the brokerage commission, the One Thousand Dollar Certificate for Michigan Telephone Company bond now in his possession as such Receiver.

HORACE G. STONE,
Solicitor for Oberlin M. Carter, I. Stanton Carter and L. D. Carter.
MARION ERWIN,
Solicitor for the United States, Sp. Asst. Atty. Gen'l.

And on to wit: the 9th day of August, 1904, in the July term, 1904, of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat, Judge presiding, there was made by the Court, the following order and entry thereof:

ORDER TO REFUND H. G. STONE PREMIUM PAID ON INSURANCE POLICY.

United States of America *vs.* O. M. Carter *et al.* } In Equity. Bill, &c. 25980.

Order as to Insurance Premium.

It appearing to the Court, that H. G. Stone has advanced and paid the sum of $453.00 Four Hundred and Fifty-three Dollars, premium due June 7, 1904, on policy No. 743,543, on the life of O. M. Carter in the Equitable Life Assurance Society of New York: It is ordered that Max H. Whitney, Receiver, refund to said H. G. Stone the said sum out of the funds in his hands as receiver, upon delivery to him of the premium receipt.

The payment to be made without prejudice to the adjustment of the amount so paid between the parties to the suit, hereafter.

Agreed to August, 1904.
MARION ERWIN,
Special Asst. to the Atty. Gen'l.

And on to wit: the 12th day of October, 1904, came the defendant O. M. Carter and filed in the clerk's office of said court his petition with account annexed in the words and figures following to wit:

PETITION AND ACCOUNT OF O. M. CARTER FOR PERSONAL EXPENSES.

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

United States of America
—against—
Oberlin M. Carter *et al.*
} In Equity.

Petition of Oberlin M. Carter for Payment of His Personal Expenses.

To the Honorable Christian C. Kohlsaat, Judge of Said Court:

Your petitioner, Oberlin M. Carter, the principal defendant herein, shows unto your Honor, as follows:

On or about August 28th, 1901, while your petitioner was confined at Fort Leavenworth, Kansas, the complainant herein commenced various suits against your petitioner, claiming that certain monies were received by your petitioner from Greene, Gaynor et al., who were contractors with the United States at the time your petitioner was engineer officer in charge of the performance of said contracts at Savannah, Georgia, and vicinity. Without making any demand on your petitioner, and without notice to your petitioner, the complainant secured the appointment of receivers of the property of your petitioner located at various places and took possession of part thereof. Thereupon your petitioner voluntarily entered into an agreement with the complainant by the terms of which, among other things, it was provided that your petitioner should turn over to said receivers all property of every description which was in controversy, which was all of the property belonging to your petitioner, except a few personal effects, and your petitioner thereupon performed said agreement and turned over to said receivers all of said property. In consideration of said agreement it was agreed by the complainant, among other things, that your petitioner should receive out of the money and property so turned over to said receivers, certain payments which in-

cluded payments for his proper defense of said suits and which further provided as follows: "If before the final de-"termination of this cause the said O. M. Carter shall be lib-"erated from prison, he shall be allowed his reasonable per-"sonal expenses incurred by him while engaged in work in "this cause, including taking of evidence, but with no com-"pensation for his time." Said agreement being dated November 6th, 1901, and being subsequently made an order of court herein.

Your petitioner further says that he was liberated from prison on the twenty-eighth day of November, 1903, and under instructions from his counsel, came direct to Chicago where he has since remained and where he still remains.

Your petitioner further says that as soon as he arrived in Chicago he commenced giving his entire time and efforts towards work in this case and has so continued up to the present time and still continues.

Your petitioner further says that he was confined in prison either at Governor's Island, New York, or at Fort Leavenworth, Kansas, from September 29th, 1899, to November 28th, 1903, being four years and two months, which with ten months allowed your petitioner for good time, completed his sentence of five years.

Your petitioner further says that all the clothing which your petitioner had at the time of his confinement, September 29th, 1899, had at the time of his release on November 28th, 1903, substantially all become out of date or lost, or of no use to your petitioner, and it became necessary for your petitioner to buy new clothing, and as he had no money or property except said personal effects referred to, he obtained the money to buy said clothing from his said counsel Horace G. Stone, which amounts for said clothing are embraced in the bills hereinafter submitted.

At the time of his confinement on September 29th, 1899, the clothing of your petitioner was stored in New York, and on your petitioner being liberated November 28th, 1903, he came to Chicago and had said clothing sent to him from New York by express rather than freight because he needed it at once. He was unable without going to New York to determine exactly which box it was in, and hence was obliged to have more than one box sent in order to be sure he would get what clothing he needed, and the expressage on said stuff was $17.80, plus $5.75, making a total of $23.55,

which was paid by his counsel Horace G. Stone. The extra expense being due to the fact that said clothing was packed with books, papers, etc., which altogether made said expressage amount to $23.55 as aforesaid.

Your petitioner further says that his salary and position were such before he was imprisoned as aforesaid that he was used to living in first class style and used to having all the conveniences and many of the luxuries of life, and that during his said confinement he lived upon the fare which his fellow prisoners lived upon, and the change was so great that notwithstanding the fact he was well treated and well cared for in said penitentiary at Fort Leavenworth, he emerged therefrom seriously broken in health and in need of more than the usual necessities and conveniences of life, and upon consulting with his counsel he was advised that it would be proper for him under the terms of said contract, so long as he was at work in this case, to rent a small furnished flat and hire a cook in order that he might have such articles of diet as would help rebuild his shattered health, and in pursuance thereof, he did hire a furnished flat in the City of Chicago in the same building with that of his brother, and hired a cook to purchase the necessary supplies and cook the same for your petitioner. The cost of renting said furnished flat plus the services of said cook were $60.00 per month, with extra pay to said cook for laundering house linen. Said flat contained sufficient room so that your petitioner could have his books and papers in this flat and work there on this case without going to the extra expense of hiring office rooms.

Your petitioner further says that he authorized the said cook to pay the gas, ice and similar bills, which she did.

Your petitioner further says that he needed, and purchased for his table, a small amount of wine and other drinkables, costing an average of about nine cents per day, which he needed to help build up his health.

Your petitioner further says that he has purchased reading matter, magazines, etc., at an expense of about twelve cents per day.

Your petitioner further says that he has, upon being urged so to do by his counsel, been to a few places of amusement, amounting altogether in nine months to $44.80.

Your petitioner further says that said furnished flat so rented by your petitioner was lacking in a few essentials for housekeeping and was entirely lacking in facilities for

your petitioner working on this case, such as desks, tables, etc., and your petitioner, under the advice of said counsel, expended $72.20 for such purpose.

Your petitioner further says that it was necessary for him to take more or less exercise, and under advice of his counsel, he thereupon joined the gymnasium of the Young Men's Christian Association at a cost of $18.00.

Your petitioner further says that he has expended for medicine $23.30 and doctor's bill $11.00 since his liberation up to September 1st, 1904, and he still owes a doctor's bill at the present time to Dr. Ely, the same not having rendered his bill.

Your petitioner further says that the said rooms in said flat where your petitioner has been at work in this case since his liberation are not in the business district, so that it is generally necessary for your petitioner to travel on street cars between said flat and the offices of your petitioner's said counsel, or to the place in the Monadnock Block in said City where the private papers of your petitioner are held by the complainant. And it is also necessary for your petitioner to get his lunch down town, the expense for which has been an average of about seventy cents per day.

Your petitioner further shows that he had no money at all upon his liberation from Fort Leavenworth and that his entire expenses and disbursements since that time have been advanced to him by his counsel, Horace G. Stone, out of his private funds, and your petitioner is desirous of repaying the same as soon as possible.

Your petitioner submits herewith his said expense account to September 1st, 1904, amounting to $1741.20 and prays the Court to have the same allowed to him, and that an order may be made by the Court directing the Receiver herein to pay said sum of money to your petitioner as aforesaid.

Dated, Chicago, September 13th, 1904.

OBERLIN M. CARTER,
Petitioner.

EXPENSE ACCOUNT OF OBERLIN M. CARTER FROM NOV. 28th, 1903, TO SEPT. 1st, 1904.

1.	Railroad fare & expenses to Chicago from Ft. Leavenworth		$ 17.50
2.	Express on clothing &c. from New York City, $17.80 & $5.75		23.55
3.	Reading matter, magazines, etc, 9 months:		
	Dec., Jan. & Feb.	$20.15	
	March	6.10	
	April	1.30	
	May	.85	
	June	.90	
	July	1.15	
	August	1.30	
			$31.75
4.	Luncheons, street car fare, etc., 9 months:		
	Dec., Jan. & Feb.	$49.40	
	March	24.05	
	April	19.00	
	May	21.10	
	June	20.35	
	July	22.30	
	August	21.60	
			$177.80
5.	Rent office and living rooms, services housekeeper, 9 months:		
	Dec., Jan. & Feb.	$180.00	
	March	60.00	
	April	60.00	
	May	60.00	
	June	60.00	
	July	60.00	
	August	60.00	
			$540.00
6.	Medicines for 9 months:		
	Dec., Jan. & Feb.	$ 6.85	
	March	2.40	
	April	7.95	
	May	2.60	
	June	1.20	
	July	1.40	
	August	2.10	
			$24.50

7.	For services of Dr. A. Sylvester Fish....		11.00
8.	Y. M. C. A. dues.....		18.00
9.	Ice, gas, laundering house linen, 9 months:		
	Dec., Jan. & Feb.....$	33.70	
	March	9.25	
	April	12.55	
	May	10.90	
	June	11.80	
	July	12.10	
	August	12.85	
			$103.15
10.	Groceries, meats, etc. (table expenses), 9 months:		
	Dec., Jan. & Feb.....$	159.45	
	March	46.80	
	April	54.25	
	May	49.50	
	June	52.75	
	July	49.10	
	August	51.20	
			$463.05
11.	Drinkables for table, 9 months:		
	Dec., Jan. & Feb.....$	14.50	
	April	4.30	
	August	5.75	
			$24.55
12.	Clothing and repairs to same, 9 months:		
	Dec., Jan. & Feb.....$	73.70	
	April	12.20	
	May	3.80	
	June	9.75	
	July	2.10	
	August	6.80	
			$108.35
13.	Laundering of personal clothing, 9 months:		
	Dec., Jan. & Feb.....$	23.40	
	March	7.70	
	April	8.10	
	May	7.40	
	June	6.85	
	July	7.30	
	August	7.65	
			$68.40

14. Amusements, 9 months:		
Dec., Jan. & Feb	$ 13.25	
March (Opera)	27.50	
April	2.75	
May	1.30	
		$44.80
15. Outfitting office, and living rooms for housekeeping		$72.20
16. Outing trip to Bangor, Michigan, in June		$ 6.20
17. Underclothing		$ 6.40
Total		$1.741.20

Chicago, Dec. 31, 1903.

Received of O. M. Carter the sum of $60.00 for rental of office and living rooms and services during the month of December, 1903.

K. STIMPER.

Chicago, Jan. 30, 1904.

Received of O. M. Carter the sum of $60 for rental of office and living rooms, and services during the month of January, 1904.

K. STIMPER.

Chicago, Feb. 29, 1904.

Received of O. M. Carter the sum of $60.00 for rental of office and living rooms, and services during the month of February, 1904.

K. STIMPER.

Chicago, Mar. 31, 1904.

Received of O. M. Carter the sum of $60.00 for rental of office and living rooms, and services during the month of March, 1904.

K. STIMPER.

Chicago, April 30, 1904.

Received of O. M. Carter the sum of $60.00 for rental of office and living rooms, and services during the month of April, 1904.

K. STIMPER.

Chicago, May 31, 1904.

Received of O. M. Carter the sum of $60 for rental of office and living rooms, and services during May, 1904.

K. STIMPER.

Chicago, June 30, 1904.

Received of O. M. Carter the sum of $60 for rental of office and living rooms, and services during June, 1904.

K. STIMPER.

Chicago, August 1, 1904.

Received of O. M. Carter the sum of $60 for rental of office and living rooms, and services during July, 1904.

K. STIMPER.

Chicago, August 31st, 1904.

Received of O. M. Carter the sum of $60 for rental of office and living rooms, and services during August, 1904.

K. STIMPER.

Chicago, June 16, 1904.

M O. M. Carter
308 N. State St.

To A. Sylvester Fish, M. D., Dr.
N. W. Corner State and Oak Street

To bill rendered $11.00
Paid 6/16

A. Sylvester Fish, M. D.

Please call.

Chicago, Dec. 31, 1903.

Received of O. M. Carter the sum of $10.20 for ice, gas and laundering of house and kitchen linen during the month of December, 1903.

K. STIMPER.

Chicago, Jan. 30, 1904.

Received of O. M. Carter the sum of $12.40 for ice, gas and laundering of house and kitchen linen during January, 1904.

K. STIMPER.

Chicago, Feb. 29, 1904.

Received of O. M. Carter the sum of $11.10 for ice, gas and laundering of house and kitchen linen during February, 1904.

K. STIMPER.

Chicago, Mar. 31, 1904.

Received of O. M. Carter the sum of $9.25 for ice, gas and laundering of house and kitchen linen during March, 1904.

K. STIMPER.

Chicago, Apr. 30, 1904.

Received of O. M. Carter the sum of $12.55 for ice, gas and laundering of house and kitchen linen during April, 1904.

K. STIMPER.

Chicago, May 31, 1904.

Received of O. M. Carter the sum of $10.90 for ice, gas, and laundering of house and kitchen linen during May, 1904.

K. STIMPER.

Chicago, June 30, 1904.

Received from O. M. Carter the sum of $11.80 for ice, gas, and laundering of house and kitchen linen during June, 1904.

K. STIMPER.

Chicago, August 1, 1904.

Received of O. M. Carter the sum of $12.10 for ice, gas, and laundering of house and kitchen linen during July, 1904.

K. STIMPER.

Chicago, August 31, 1904.

Received of O. M. Carter the sum of $12.85 for ice, gas, and laundering of house linen during August, 1904.

K. STIMPER.

Chicago, Dec. 31, 1903.

Received of O. M. Carter the sum of $49.60 for groceries, meats, fruits, and other table expenses during the month of December, 1903.

K. STIMPER.

Chicago, Jan. 31, 1904.

Received of O. M. Carter the sum of $58.70 for groceries, meats, fruits, etc., being the table expenses during January, 1904.

K. STIMPER.

Chicago, Feb. 29, 1904.

Received of O. M. Carter the sum of $51.15 for groceries, meats, fruits, etc., being the table expenses during February, 1904.

K. STIMPER.

Chicago, Mar. 31, 1904.

Received of O. M. Carter the sum of $46.80 for groceries, meats, fruits, etc., being the table expenses during March, 1904.

K. STIMPER.

Chicago, Apr. 30. 1904.

Received of O. M. Carter the sum of $54.25 for groceries, meats, fruits, etc., being the table expenses during April, 1904.

K. STIMPER.

Chicago, May 31, 1904.

Received of O. M. Carter the sum of $49.50 for groceries, meats, fruits, etc., being table expenses during May, 1904.

K. STIMPER.

Chicago, June 30, 1904.

Received of O. M. Carter the sum of $52.75 for groceries, meats, fruits, etc., being living expenses during June, 1904.

K. STIMPER.

Chicago, August 1, 1904.

Received of O. M. Carter the sum of $49.10 for groceries, meats, fruits, etc., being living expenses during July, 1904.

K. STIMPER.

Chicago, August 31, 1904.

Received of O. M. Carter the sum of $51.20 for groceries, meats, fruits, etc., being living expenses during August, 1904.

K. STIMPER.

Endorsement: Petition of Oberlin M. Carter for payment of his personal expenses filed Oct. 12, 1904. Marshall E. Sampsell, Clerk.

And on to-wit: the 12th day of October, 1904, came the United States by Marion Erwin, its solicitor, and filed in the clerk's office of said Court, its answer to the petition of O. M. Carter for payment of personal expenses in the words and figures following, to-wit:

ANSWER OF UNITED STATES TO PETITION OF O. M. CARTER FOR PAYMENT OF PERSONAL EXPENSES OCT. 12, 1904.

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

The United States of America
vs.
Oberlin M. Carter, *et al.*
} In Equity, Bill &c.

Answer of the United States to Petition of O. M. Carter for Payment of Personal Expenses.

And now comes the United States, by Marion Erwin, Special Assistant to the Attorney General, and for answer to the foregoing petition say:—

1. It is not true that Receivers pendente lite were appointed, in the suits instituted by the United States against O. M. Carter in the several districts where suits were brought, without notice to O. M. Carter. On the contrary while the appointment of temporary receivers was obtained to hold custody of the property claimed, until O. M. Carter, who was then in the penitentiary, could be given notice and be heard, that immediately thereupon notice was published in each case according to law, and personal service thereof given said O. M. Carter, and a day fixed by the Court on which said Carter could be heard as to the propriety of appointing a receiver pendente lite, and that in each instance said O. M. Carter appeared by counsel at or before the return day and consented to a continuance of the receiver pendente lite, in preference to proceeding with the hearing offered. This was notably true as to the bill filed in the Northern District of Illinois, the record showing that after full notice and appearance at the time set for hearing, the Government being ready and pressing for hearing, the said O. M. Carter and his co-defendants L. D. and I. S. Carter, came in and consented to a continuance of the receivership pendente lite. And this was prior to the agreement of Nov. 6, 1901, under which said Carters undertook to turn over and account for the assets claimed by the Government still in their hands, which agreement of Nov. 6, 1901, was made while certain proceedings for contempt were on the calendar pending for hearing, for failure of said Carters to turn over said assets to the receiver previously appointed as aforesaid. The said agreement of Nov. 6, 1901, is therefore

to be construed in the light of the proceedings pending at the time the agreement was made.

2. It is admitted that the agreement of Nov. 6, 1901, contains the following clause:

(d) "And if before the final determination of this cause the said Oberlin M. Carter, shall be liberated from prison, he shall be allowed his reasonable personal expenses incurred by him while engaged in work in this cause, including the taking of evidence, but with no compensation for his time, such expenses to be determined by the Court and paid out of the monies in court."

It is submitted by the Government, that the expression "personal expenses incurred by him while engaged in work in this cause" should have the usual meaning applied to it that any business man would give it in a contract between a merchant and travelling salesman, or as is given it by the Government in contracts or statutes for payment of the personal expenses of its agents, attorneys or judges, viz: That it applies to board and lodging and travelling expenses, while attending hearing to take testimony, or while at work in the conduct of the case. The payment to Carter of any compensation for his time is expressly negatived, and there is nothing in the clause authorizing the application of any part of the fund in Court, to the purchase of a personal wardrobe, for the defendant, or for general reading matter, or for theatres or other amusement, or for religious dues. In fact even such personal expenses as were provided for were only those "incurred while engaged in work in this cause" which negatives the idea that any expense was provided for, other than those relating to the cause.

(3) For the foregoing reasons, the Government objects to the following items in the account attached to said petition:

Item 2—Express on clothing from New York..... $ 23.55
Item 3—Reading matter 31.75
(Not an expense pertaining to the cause.)
Item 6—Medicines 24.50
(Not an expense pertaining to the cause.)
Item 7—Doctor's bill 11.00
(Not an expense pertaining to the cause.)
Item 8—Y. M. C. A. Dues..... 18.00
(Not an expense pertaining to the cause.)
Item 11—Drinkables for table..... 24.55
(Not an expense pertaining to the cause, and charge too indefinite.)

Item 12—Clothing 108.35
(Not an expense pertaining to the cause.)
Item 13—Laundering 68.40
(Not an expense pertaining to the cause.)
Item 14—Amusements 44.80
(Not an expense pertaining to the cause.)
Item 15—Outfitting office and living rooms..... 72.20
(Not an expense pertaining to cause and no specifications of payments.)
Item 16—Outing trip 6.20
(Not an expense pertaining to the cause.)
Item 17—Underclothing 6.40
(Not an expense pertaining to the cause.)

Total $439.70

The following items are objected to because too indefinite no particulars are given and there is no reason why the charges should not have been itemized day by day in the account presented, precisely as a travelling salesman would itemize his account or an agent of the Government would itemize his personal expenditures:

Item 4—Luncheons, &c, 9 months.....$177.80
(No details.)
Item 9—Ice, gas, laundering house linen, 9 months.... 103.15
(No details or vouchers.)
Item 10—Groceries, meats 463.05
(No details or vouchers.)

$744.00

Item 1—Is not objected to.....$ 17.50
Item 5—Rent &c not objected to provided vouchers for rent from person to whom rent was paid are filed... 540.00

In view of the want of detail and vouchers in the account, it is respectfully submitted that the account should be referred to a special master, to pass upon the same.

And having fully answered the said United States submits to the judgment of the Court.

October 12, 1904.

MARION ERWIN,
Special Asst. to the Atty. Gen'l,
Complts. Solicitor.

And on to wit: the 12th day of October, 1904 in the July term, 1904, of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat, Judge presiding, there was made by the Court, the following order and entry thereof:

ORDER TO PAY O. M. CARTER $1,000 AND RESERVING OBJECTIONS.

The United States of America
vs.
O. M. Carter, *et al.*
} In Equity, Bill &c.

The said O. M. Carter having filed a petition, praying payment out of the fund in court, under terms of the agreement of Nov. 6, 1901, of record in said cause, of certain personal expenses claimed to have been paid out by him during the nine months ending August 31, 1904, aggregating $1741.20,

And the United States of America having filed objections to the payment of various items of said account:—

By agreement of parties it is ordered that the Receiver Max H. Whitney is directed to pay to said O. M. Carter out of any moneys in his hands as such Receiver, the sum of One thousand Dollars, on account,

And the questions raised by the said objections of the United States to said petition and account are reserved for further consideration and disposition, when Counsel can be heard.

Consented to Oct. 6, 1904.

MARION ERWIN,
Sp. Asst. to Atty. Genl.
HORACE G. STONE,
Solicitor for said Carters.

And on to wit: the 13th day of February, 1905, in the December term, 1904, of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat, Judge presiding, there was made by the Court, the following order and entry thereof.

ORDER TO PAY MAX H. WHITNEY, RECEIVER, $500.

United States of America
v.
Oberlin M. Carter *et al.*

On motion of the receiver herein, Max H. Whitney, and in pursuance of the consent of the solicitors for the complainant and defendants herein given in open court

It Is Ordered that the said receiver be, and he is hereby, authorized to pay to himself out of the funds in his hands as such receiver, the sum of Five Hundred dollars on account of receiver's fees herein.

And on to wit: the 13th day of February, 1905, in the December term, 1904, of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat, Judge presiding, there was made by the Court, the following order and entry thereof:

ORDER FOR RECEIVER TO SELL CERTAIN BONDS.

The United States of America,
Complainant,
vs.
Oberlin M. Carter *et al.*,
Defendants.
In Equity
Bill &c.
25980.

It appearing to the Court that there are not sufficient cash funds in the possession of Max H. Whitney, Receiver, in the above stated cause, necessary to be used in carrying out the administrative orders of the Court, it is ordered by the Court that said Receiver is hereby authorized and directed to sell at private sale at current market price the following described securities now in his hands as Receiver in said cause, to wit:

Five (5) Hocking Valley Railway First Consolidated General 4½ per cent. bonds Numbers 4757, 4758, 4759, 4760, and 4761, with coupons attached commencing July 1905.

And to hold the proceeds for disbursement under the orders of this Court made or to be made in said cause.

And on to wit, the 13th day of February, 1905, in the December term, 1904, of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat, Judge presiding, there was made by the Court, the following order and entry thereof:

ORDER TO PAY H. G. STONE $5,000 ON ACCOUNT AND ALLOWING O. M. CARTER $150 PER MONTH.

United States of America,
Complainant,
vs.
Oberlin M. Carter *et al.,*
Defendants.
} In Equity. Bill &c.

Horace G. Stone, solicitor for Oberlin M. Carter in the above stated cause, having submitted to the court an account for his expenses incurred as solicitor for O. M. Carter in said cause, and by petition praying an allowance to him from the fund in court for reimbursement for said expenses, and also an allowance for attorney's fees, under the agreement of parties made of record Nov. 6, 1901, also submitted an account for personal expenses claimed to have been incurred and paid by said O. M. Carter while engaged in work in this cause, and praying the payment of the same out of the fund in court, under said agreement of November 6, 1901.

And Marion Erwin, solicitor for complainant, having objected to the allowance of said expense accounts as not sufficiently proved and that certain items thereof are not chargeable under the agreement. And by reason of the engagements of the court in other matters, and the engagements of counsel in the work in the main cause—it being impracticable to dispose of said matters by a full hearing at this time, but it being admitted by counsel for the United States that it is in the discretion of the court to make an allowance to said H. G. Stone out of the fund in court, as a payment on account of his fees as attorney for said O. M. Carter, under the agreement of November 6, 1901, and the court having determined that an allowance of $5,000.00 to said Stone at this time, as payment on account of fees as aforesaid is reasonable,

It is ordered that said allowance of $5,000.00 be made, and that the same be paid by the Receiver, Max H. Whitney, out of the fund in court.

It is further ordered that the sum of one hundred and fifty dollars per month from November 28, 1903, be allowed to O. M. Carter, out of the fund in court as an advance prior to the adjustment of his expense account on account of his personal expenses while engaged in work in the case to be paid by said Max H. Whitney monthly at the ..... of each month, less the sum of one thousand dollars heretofore advanced to said O. M. Carter under the order of the court, and that the receiver continue to pay said monthly allowance of $150.00 to said O. M. Carter until said expense accounts are adjusted, unless hereafter otherwise ordered by the court.

And on to wit: the 20th day of April, 1905, in the December term, 1904, of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat, Judge presiding, there was made by the Court, the following order and entry thereof.

ORDER TO PAY R. H. WYMAN, EXAMINER, $770.

The United States of America
vs.
Oberlin M. Carter *et al.*

By consent of parties, it is ordered by the Court that there be allowed the sum of Seven Hundred and Seventy Dollars ($770.00) to Richard H. Wyman, Special Examiner, for services as per account rendered to date.

And the Receiver herein is authorized and directed to make payment of same to said Special Examiner out of the funds in his hands in said cause, this payment to be made subject to adjustment between the parties as costs.

O. K.

HORACE G. STONE,
Solr. for Defts. O. M. Carter,
& L. D. & I. S. Carter.
MARION ERWIN,
Sp. Asst. to Atty. Gen'l.
April, 18, 1905.

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

The United States of America
vs.
Oberlin M. Carter *et al.*

Account of Richard H. Wyman, Special Examiner, for taking depositions on the part of the Defendants in said cause, as follows:

Attendance by the Examiner, January 9, 10, 16, 17, 18, 19, 20, 30, and February 11 and 13, 1905, 10 days	$ 50.00
To reporting testimony and transcribing the same: 1800 folios at 15c per folio	270.00
To making 5 copies for use in other districts: 1800 folios each, at 5c per folio	450.00
	$770.00

United States of America,
Northern District of Illinois,
Northern Division. } ss.

Richard H. Wyman, being first duly sworn, deposes and says that the above account is just and true.

.....

Subscribed and sworn to before me this 2nd day of March, A. D. 1905.

.....

Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

And on to wit: the 2nd day of May, 1905, in the December term, 1904, of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat, Judge presiding, there was made by the Court, the following order and entry thereof:

ORDER TO PAY W. R. HEWLETT, EXAMINER, $37.80.

The United States of America
vs.
Oberlin M. Carter *et al.*

By consent of parties, it is ordered by the Court that there be allowed the sum of Thirty-seven dollars and eighty cents ($37.80) to W. R. Hewlett, Examiner at Savannah, Ga., for taking and reporting testimony in this cause on the part of the defense, for use in this Court as per his account rendered and filed herewith.

And Max. H. Whitney, receiver herein, is authorized and directed to make payment of same to said Examiner out of the funds in his hands in said cause, this payment to be made subject to adjustment between the parties as costs.

Consented to.

MARION ERWIN,
Special Asst. to Atty Genl.
HORACE G. STONE,
Solicitor for O. M. Carter,
L. D. & I. S. Carter.

In the Circuit Court of the United States for the Southern District of Georgia, Eastern Division.

The United States of America
vs.
Oberlin M. Carter *et al.*
In Equity.

Oberlin M. Carter et al.
To William R. Hewlett, Examiner, Dr.

To reporting and transcribing evidence of Thos. H. Laird, Chas. S. Sweeney, C. C. Cole and J. B. Quinn, witnesses on behalf of Oberlin M. Carter et al., under stipulation of Counsel to be paid out of the fund in Court:

One original copy of 18 pages, 72 folios at 20c per folio		$14.40
Four copies of 18 pages each, 288 folios at 5c per folio		14.40
		$28.80
Examiner's per diem taking testimony October 27th-28th, 1904, at $3 per day	$6.00	
Examiner's per diem, writing out testimony, Nov. 2, 1904	3.00	9.00
		$37.80

United States of America,
Southern District of Georgia. }

Before me comes William R. Hewlett, who being duly sworn deposes and states, that the above account rendered by him as Examiner in the Equity case of the United States of America versus Oberlin M. Carter et al., for taking testimony on the part of the defendants, under 67th Equity Rule, and under agreement of Counsel, to be paid out of the fund in Court, for use in the Districts in which bills are pending, is just and true; that the services therein charged for were duly performed, as therein stated, and that he has received no compensation for said services.

W. R. HEWLETT.

Sworn to and subscribed before me this November 23rd, 1904.

S. F. B. GILLESPIE,

(Seal) *Deputy Clerk U. S. Cir. Ct. So. Dist. Ga.*

And on to wit: the 25th day of September, 1905, in the July term, 1905, of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat, Judge presiding, there was made by the Court, the following order and entry thereof:

ORDER TO PAY H. G. STONE $4,250 AND GUNTHORP-WARREN CO. $977.60 AND TO SELL CERTAIN SECURITIES.

United States of America, *Complainant,* —*against*— Oberlin M. Carter *et al.,* *Defendants.*	25980. In Equity. Bills, &c.

Whereas under Paragraph "7" of the agreement between the parties of November 6th, 1901, of record in this cause, it is provided as follows:

"(7) From said fund to be accounted for to the receiver, "the sum of $5,000.00 shall be left in the hands of H. G. Stone, "Chief Counsel of said Oberlin M. Carter, from which to com- "pensate and cover expense of employment of local counsel in

"any of the districts in which local counsel have been or may "be employed in any branch of this case."

And whereas in the accounting had in this cause before Wm. M. Booth, Special Master, L. D. Carter in accounting for funds in his hands held for account of Oberlin M. Carter, claimed credit for the sum of Seven Hundred and Fifty Dollars ($750.00) by said L. D. Carter paid over to said H. G. Stone by check of February 14th, 1902, and which amount was on February 18th, 1902, paid over by said H. G. Stone to Abram J. Rose, local counsel for the said Carters in the auxiliary suits pending in New York and New Jersey; and credit for which amount by the Master was allowed L. D. Carter in the accounting. And whereas the counsel for the United States contends that the Seven Hundred and fifty dollars ($750.00) should be deducted from said Five Thousand Dollars ($5,000.00), which was to be left in the hands of said H. G. Stone for the purpose aforesaid, while the said H. G. Stone, defendants' counsel, contends the reverse.

It is Ordered that the Receiver, Max H. Whitney, shall out of the fund in his hands as Receiver in this cause now pay over to said H. G. Stone the sum of Four Thousand Two Hundred and Fifty Dollars ($4,250.00), being the difference between said sum of Five Thousand Dollars ($5,000.00) and the Seven Hundred and Fifty Dollars ($750.00).

The said payment to be without prejudice to the rights of said defendants, if any they now have, to further contend in this cause for the payment of said Seven Hundred and Fifty Dollars ($750.00), and to be without prejudice of the rights of the United States, if any they now have, to contend that there has not been a full accounting for the assets to be turned over to the Receiver.

And whereas the said H. G. Stone, counsel for said Oberlin M. Carter et al., has caused to be printed by the Gunthorp-Warren Printing Company, certain pleadings and O. M. Carter's direct testimony in this cause, bills for which aggregate Nine Hundred and Seventy-seven Dollars and Sixty Cents ($977.60), proof of the necessity for the printing which or the propriety of paying which from the fund in court is waived by the counsel of the United States without prejudice to the right to object to similar bills in future.

It is Ordered that said Max H. Whitney, Receiver, shall out of the fund in his hands as Receiver in this cause pay said bills amounting to Nine Hundred and Seventy-seven Dollars

and Sixty Cents ($977.60) to the said Gunthorp-Warren Printing Company, filing their receipts as vouchers. Such payment to be subject to adjustment as costs between the parties on final decree.

If said Receiver has not a sufficient amount of money in his hands available for the payment of the above amounts ordered to be paid by him, he is authorized and directed to sell a sufficient number of the Kentucky Central 4% bonds in his hands, at current market price, as may be necessary to raise the additional amount required.

Assented to
MARION ERWIN,
Special Asst. to Atty. Gen'l,
Complts. Sol.
HORACE G. STONE,
Solr. for Carters.

And on to wit: the 6th day of October, 1905, in the July term, 1905, of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat, Judge presiding, there was made by the Court, the following order and entry thereof:

ORDER TO PAY R. H. WYMAN, EXAMINER, $300.

United States of America
vs.
Oberlin M. Carter *et al.*
} Bill, etc.

It is ordered by the Court that Richard H. Wyman, Examiner in the above stated cause, be paid by the Receiver out of the funds in his hands the sum of Three Hundred Dollars ($300.00) on account, the said amount to be adjusted as costs between the parties hereafter.

Consented to
MARION ERWIN,
Special Assistant to the Attorney General,
Complainant's Solicitor.
HORACE G. STONE,
Solicitor for O. M. Carter.

And on to wit: the 23rd day of October, 1905, in the July term, 1905, of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat, Judge presiding, there was made by the Court, the following order and entry thereof:

ORDER TO PAY R. H. WYMAN, EXAMINER, $300.

United States of America
vs.
Oberlin M. Carter *et al.*
} Bill, etc.
25980.

It is ordered by the Court that Richard H. Wyman, Examiner in the above named cause, be paid by the Receiver out of the funds in his hands the sum of Three Hundred Dollars ($300.00) on account, the said amount to be adjusted as costs between the parties hereafter.

Consented to Oct. 20, 1905.

MARION ERWIN,
Special Assistant to the Attorney General,
Complainant's Solicitor.
HORACE G. STONE,
Solicitor for O. M. Carter.

And on to wit: the 6th day of November, 1905, in the July term, 1905, of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat, Judge presiding, there was made by the Court, the following order and entry thereof:

ORDER TO PAY R. H. WYMAN, EXAMINER, $600.

United States of America
vs.
Oberlin M. Carter *et al.*
} Bill, etc.
No. 25980.

It is hereby ordered by the Court that Richard H. Wyman, Special Examiner in the above stated cause, be paid by the Receiver out of the funds in his hands the sum of Six Hundred Dollars ($600.00) on account, the said sum to be adjusted as costs between the parties hereafter.

Nov. 6th, 1905.

Consented to

M. ERWIN,
Special Assistant to the Attorney General,
Complainant's Solicitor.
HORACE G. STONE,
Solicitor for Oberlin M. Carter.

And on to wit: the 8th day of November, 1905, in the July term, 1905, of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat, Judge presiding, there was made by the Court, the following order and entry thereof:

ORDER TO PAY WHITNEY, RECEIVER, $500.

In the United States Circuit Court, Northern District of Illinois, Eastern Division.

United States of America
vs.
Oberlin M. Carter *et al.* } No.

On motion of the receiver herein, Max H. Whitney, and in pursuance of the consent of the solicitors for the complainant and for the defendants herein in open court:

It Is Ordered that the said receiver be, and he is hereby, authorized to pay to himself out of the funds in his hands as such receiver, the sum of Five Hundred Dollars on account of receiver's fees herein.

Consented to Nov. 7, 1905.

MARION ERWIN,
Sp. Asst. to Atty. Gen'l.
HORACE G. STONE,
Solr. for Carters.

And on to wit: the 27th day of November, 1905, in the July term, 1905, of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christion C. Kohlsaat, Judge presiding, there was made by the Court, the following order and entry thereof:

ORDER TO PAY R. H. WYMAN, EXAMINER, $500.

United States of America
vs.
Oberlin M. Carter *et al.* } Bill, etc. No. 25890.

It is ordered by the Court that Richard H. Wyman, Examiner in the above stated cause, be paid by the Receiver out

of the funds in his hands the sum of Five Hundred Dollars ($500.00) on account, the said amount to be adjusted as costs between the parties hereafter.

Consented to Nov. 26, 1905.

MARION ERWIN,
Special Assistant to the Attorney General, Complainant's Solicitor.

HORACE G. STONE,
Solicitor for O. M. Carter.

And on to wit: the 11th day of December, 1905, came Horace G. Stone, Solicitor of O. M. Carter, and filed in the clerk's office of said Court a petition in the words and figures following to wit:

PETITION OF H. G. STONE FOR ALLOWANCE OF FEES.

In the Circuit Court of the United States, Northern District of Illinois Eastern Division.

United States of America, *Complainant,*
—against—
Oberlin M. Carter *et al.*, *Defendants.*
} In Equity.

Petition of Horace G. Stone for a payment on account of Solicitor's fees under the contract of November 6th, 1901.

To the Honorable Christian C. Kohlsaat, Circuit Judge of Said Court:

Your petitioner, Horace G. Stone, respectfully shows unto your Honor that he has been the Chief Counsel for said Oberlin M. Carter in the above entitled cause for more than four years, and during that time he has spent a very large part of his time in examining and meeting the enormous amount of testimony and documentary and other evidence introduced in said cause by said complainant, and in preparing, examining and introducing in evidence the testimony and evidence for the defendants. That the complainant has introduced in evidence in said cause many thousands of pages of testimony and many more thousands of pages of exhibits, substantially all of which are immaterial in this cause, but

the defendant has been obliged to thoroughly examine and meet and overcome the same by a very extraordinary amount of work and labor in said cause, especially in view of the fact that a very considerable percentage of such documentary evidence introduced by said complainant was false and misleading.

Your petitioner further shows that a year ago he notified the Solicitor for the complainant in writing that this petitioner would close his case in January, 1905, and be ready for trial in February, 1905, and was ready, willing and anxious so to do. But your petitioner shows that the complainant and its solicitors have evaded and avoided the trial of said case on various pretexts constantly for the greater part of the last year. That the solicitor for the complainant promised time and again during said period to go ahead with said case, and kept your petitioner constantly waiting for him to proceed, and then in every instance said complaniant's solicitor avoided going ahead with said case between February, 1905, and the latter part of September, 1905, and even after said September, 1905, complainant's solicitor was absent about a month.

Your petitioner expected said complainant's solicitor to take up said case from time to time as agreed, and kept in constant readiness to proceed in said cause, and owing to the immense amount of testimony and exhibits in said cause your petitioner was not able to lay aside said case and go ahead with other work without having to go over again a large amount of said work, and hence your petitioner during the last year has devoted his entire time and attention to said case, excepting not exceeding five days altogether.

Your petitioner further shows that he is now ready for trial in the above entitled cause, but the complainant's solicitor seeks to postpone the trial of said cause for several months.

Your petitioner further shows that said contract of November 6th, 1901, did not contemplate that your petitioner should wait for the payment of his solicitor's fees and disbursements until the case was closed, but it expressly provided that your petitioner might apply from time to time for the payment of his solicitor's fees and his disbursements.

Your petitioner, therefore, prays that the Receiver in the above entitled cause be authorized and instructed to pay to your petitioner the sum of Fifteen Thousand (15,000) Dollars on account of solicitor's fees due to your petitioner, and

if such Receiver has not sufficient money on hand to pay the same that said Receiver is authorized to apply to the Court ex-parte for the sale of such securities as he may think proper to sell for the payment of said amount.

Dated Chicago, December 11th, 1905.

HORACE G. STONE.

Endorsement: Filed Dec. 11, 1905. Marshall E. Sampsell, Clerk.

And on to wit: the 11th day of December, 1905, came the complainant by Marion Erwin, its solicitor, and filed in the clerk's office of said Court, an answer to the petition of H. G. Stone for allowance of fees, in the words and figures following, to wit:

ANSWER OF THE UNITED STATES TO PETITION OF H. G. STONE FOR FEES.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

United States of America *Compt.*
vs.
Oberlin M. Carter *et al.*, *Deft.*
} In Equity.

Answer of United States to petition of H. G. Stone for additional allowance for fee.

The answer of the United States to the petition of H. G. Stone filed Dec. 11, 1905, in said cause for allowance of additional attorney's fees to him out of the fund in court, respectfully shows:

(1) That by agreement of parties of record, the depositions of certain witnesses taken before the Court Martial which tried Captain Carter, and the depositions of certain witnesses in the proceedings had before Commissioner Shields in New York for removal of B. D. Greene et al. were considered as taken in this cause each party furnishing to the other, a list of the witnesses whose said depositions for the complainant or for the defendants as the case may be, were to be so used.

(2) Complainant took all additional depositions of wit-

nesses on part of complainant which complainant deemed relevant and closed its case prior to Feb. 15th, 1904.

(3) That on Feb. 15th, 1904, this Court allowed said H. G. Stone out of the fund in Court as an allowance for own counsel fees $6,000.00. And on May 3rd, 1904, this Court allowed said H. G. Stone on account of a bill of expenses by him $1,089.94.

(4) That from Feb. 15, 1904, to September, 1904, said Stone took no testimony although complainant's counsel was ready all during said period to attend the taking of said testimony, and kept the documents relating to said cause which were in the custody of the Government constantly on hand in Chicago, subject to defendants inspection from day to day. And complainant's counsel remained in Chicago a large part of said period ready and anxious for the defendants to proceed with the taking of their testimony.

(5) That at different times between September, 1904, and Feb. 23, 1905, the defense took some testimony in Savannah, Ga., and Chicago. And on Feby. 13th, 1905, this Court by order allowed said H. G. Stone, the sum of $5,000—out of the fund in Court, as an allowance to him on account of his own counsel fees.

(6) That from about March 1, 1905, to September 15th, 1905, about six months and a half, the counsel for the United States having obtained in the presence of defendant's counsel, a leave of absence from this Court, and leave to withdraw for the special purpose, the original documents used by the complainants in this cause, was absent in Canada conducting certain extradition proceedings against B. D. Greene and John F. Gaynor, charged with conspiracy, etc., with O. M. Carter in and about the matters involved in this cause.

On September 15, 1905, complainants having obtained the original documents used before the Courts in Canada, the counsel returned to Chicago and the taking of evidence by the defense was resumed before the Examiner. And with the exception of about three weeks, the examination of defendant's witnesses has been constantly proceeding from day to day, until this day when the defense has finally announced closed.

(7) That on September 25th, 1905, this Court by order paid over to said H. G. Stone the sum of $4250—being the balance of $5000—provided to be paid over to him under clause "7" of the agreement of Nov. 6, 1901, from which to

compensate and cover expenses of employment of local counsel for defense.

(8) That exclusive of said last mentioned sum of $5000—and said allowance of $1089.94 expenses, said H. G. Stone has been paid $11,000.00 on account out of the fund in Court for personal compensation.

(9) That prior to the agreement of Nov. 6, 1901, complainant had already placed in the hands of receivers' in other districts the bulk of the properties involved in this litigation and that proceeding were at the time of said agreement pending in this district to force I. Stanton Carter and L. D. Carter to turn over to the receiver of this Court certain assets claimed by the United States to have been traced into their possession. In pursuance of the agreement the defendants turned over to the receiver of the Court in this cause, certain bonds aggregating face value of $60,000—a note of one Colehour face value of $11,000—and evidence of the fact that certain other notes and mortgages and stocks traced to him had already been tied up by the complainants' suit filed in Georgia by injunction against Mackall & Anderson. On a reference made by this Court to Special Master Booth, $23,000 additional bonds were required to be turned over to the receiver, by order of this Court, which was done, but the sum of about $27,000, which said Special Master found has been traced to I. S. Carter and not accounted for, has not been turned over—and in the order of this Court the question as to whether the defendants have complied with the agreement in that particular has been reserved for consideration on the final argument.

(10) That the terms of the agreement of Nov. 6, 1901, clause (9), it is expressly provided that:

"The assent of the United States to paragraphs "1", "7" and "8" of this agreement is predicated upon the understanding that the said defendants will turn over to the receiver at least substantially all of the assets turned over to I. Stanton Carter and L. D. Carter by J. H. Paul and R. E. Westcott and James F. Bragg, or their proceeds and re-investments, except such as has been, prior to the receivership bona fide paid out or pledged by them for attorneys fees or as expenses in defense of Carter, or expended by them legitimately in the handling of said properties or which has not already been taken possession by receiver in this cause."

(11) That clause (8) of said agreement contemplated the payment from time to time of certain specified expenses there-

in specifically enumerated, but it never was contemplated by said agreement, that the Court would go into the merits of the services rendered by defendants chief counsel in advance of a final hearing in the cause.

That with the allowance of said $11,000—already made said Stone out of said fund and $5,000—paid to him for local counsel for defense, to make to the said Stone an allowance for an additional sum in advance for the final hearing, would make said sum all out of propertion to the amount brought into Court under said agreement.

Wherefore the complainant not admitting the allegations of said petition in regard to the manner in which the litigation has been conducted objects to any additional allowance to said counsel at this time .

Respectfully submitted,

MARION ERWIN,
Sp. Asst. to Atty. Gen'l., Comp. Solr.

Endorsement: Filed Dec. 11, 1905. Marshall E. Sampsell, Clerk.

And on to wit: the 11th day of December, 1905, in the July term, 1905, of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat, Judge presiding, there was made by the Court, the following order and entry thereof:

ORDER TO PAY H. G. STONE $2,500, AND FOR RECEIVER TO SELL SECURITIES.

United States
vs. } 25980.
Oberlin M. Carter *et al.*

Petition of H. G. Stone for allowance on account of fees, Order.

Upon reading and filing the above petition, It Is Ordered that the Receiver in the above entitled cause, Max H. Whitney, pay to Horace G. Stone, the sum of Twenty-five Hundred Dollars, out of the money in his hands as such Receiver, and if he has not on hand a sufficient amount of money to pay the same, then he is authorized and directed to apply to the Court for an order authorizing him to sell such securities as he may deem proper for the puprose of paying the same.

And on to-wit: the 12th day of December, 1905, in the July term, 1905, of said court, in the record of proceedings thereof, in said entitled cause before the Honorable Christian C. Kohlsaat, judge presiding, there was made by the court, the following order and entry thereof:

ORDER TO PAY R. H. WYMAN, EXAMINER, $500.

United States of America,
vs.
Oberlin M. Carter, *et al.*
} Bill, etc. No. 25890.

It is ordered by the court that Richard H. Wyman, examiner in the above stated cause, be paid by the Receiver out of the funds in his hands the sum of Five Hundred Dollars ($500.00) on account, the said amount to be adjusted as costs between the parties hereafter.

Consented to Dec. 11, 1905.

MARION ERWIN,
Special Assistant to the Attorney General, Complainant's Solicitor.
H. G. STONE,
Solicitor for O. M. Carter.

And on to-wit: the 13th day of December, 1905, in the July term, 1905, of said court, in the record of proceedings thereof, in said entitled cause before the Honorable Christian C. Kohlsaat, judge presiding, there was made by the court, the following order and entry thereof:

ORDER FOR RECEIVER TO SELL CERTAIN SECURITIES.

United States of America
vs.
Oberlin M. Carter, *et al.*
} In Equity. Bill, &c.

It is ordered by the court that Max. H. Whitney, Receiver, be and he is hereby directed to sell at current market prices a sufficient amount of the railroad or other bonds in his hands as receiver in said cause to raise a sufficient sum to pay off the current or special disbursements which he has been di-

rected to make under the orders of the court. The bonds to be sold to be the bonds in the hands as Receiver known as Kentucky Central Bonds. In open Court.

Dec. 11, 1905.

Consented to:

MARION ERWIN,
Sp. Asst. to Atty. Gen'l., Complts. Sol.

HORACE G. STONE,
Solr. for Carter.

And on to-wit: the 3rd day of January, 1906, in the December term, 1905, of said Court, in the record of proceedings thereof, in said entitled cause before the Honorable Christion C. Kohlsaat, judge presiding, there was made by the Court, the following order and entry thereof:

ORDER TO PAY R. H. WYMAN, EXAMINER, $1,000.

United States of America,
vs.
Oberlin M. Carter, *et al.*
} Bill, etc. No. 25890.

It is ordered by the Court that Richard H. Wyman, Examiner in the above stated cause, be paid by the Receiver, out of the funds in his hands, the sum of One Thousand Dollars, ($1,000.00) on account, the said amount to be adjusted as costs between the parties hereafter.

Consented to Dec. 30, 1905.

M. ERWIN,
Special Assistant to the Attorney General, Complainant's Solicitor.

HORACE G. STONE,
Solicitor for O. M. Carter.

And on to-wit: the 5th day of February, 1906, in the December term, 1905, of said Court, in the record of proceedings thereof, in said entitled cause before the Honorable Christion C. Kohlsaat, judge presiding, there was made by the Court, the following order and entry thereof:

ORDER TO PAY CLERK'S COSTS, $78.40.

United States
vs.
O. M. Carter, *et al.* } Chancery, 25980.

It appearing from the report of the Clerk that the court costs in said cause up to and including January 1st, 1906, amount to the sum of Seventy-eight dollars and forty cents ($78.40).

It is ordered that the receiver pay said amount out of the funds in said cause, taking a receipt therefor.

Consented:

MARION ERWIN,
Sp. Asst. to Atty. Gen'l., Complt. Sol.
HORACE G. STONE,
Solr. for Carters.

And on to-wit: the 18th day of June, 1906, in the December term, 1905, of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat, judge presiding, there was made by the Court, the following order and entry thereof:

ORDER TO PAY R. H. WYMAN, EXAMINER, $700.

United States of America
vs.
Oberlin M. Carter, *et al.* } Bill, etc. 25,980.

It is ordered by the Court that Richard H. Wyman, Examiner in the above stated cause, be paid by the Receiver out of the funds in his hands the sum of Seven Hundred Dollars ($700.00) on account, the said amount to be adjusted as costs between the parties hereafter.

Consented to June 16, 1906.

MARION ERWIN,
Special Assistant to the Attorney General, Complainant's Solicitor.
HORACE G. STONE,
Solicitor for O. M. Carter.

And on to-wit: the 19th day of June, 1906, in the December term, 1905, of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat, judge presiding, there was made by the Court, the following order and entry thereof:

ORDER TO PAY GUNTHORP WARREN PRINTING CO. $1,540.00 AND FOR RECEIVER TO SELL SECURITIES.

The United States of America
vs.
Oberlin M. Carter, *et al.*
} In Equity. Bill, etc.

ORDER TO PAY FOR PRINTING.

The Defendant's Counsel, Horace G. Stone, having caused to be printed by the Gunthorp-Warren Printing Company, for use in the trial of the above stated cause, certain parts of the testimony of Oberlin M. Carter, C. McPherson, R. Nelson and W. H. Bixby, witnesses on the part of the defense, taken before Examiner Wyman, 100 copies having been printed at a cost aggregating $1,540.00.

It is ordered that upon the depositing in Court of thirty copies of said Defendant's testimony, that Max H. Whitney, Receiver, be authorized and directed to pay the said bill of the Gunthorp-Warren Printing Company, taking receipts therefor to be filed as his vouchers.

It is further ordered that if the said Max H. Whitney does not have sufficient cash money on hand to pay said bill together with amounts heretofore ordered to be paid out, he may sell a sufficient quantity of the Kentucky Central Bonds in his hands to realize the cash for that purpose. The amounts paid out under this order to be adjusted as costs between the parties in the final decree of this Court.

Consented to:

MARION ERWIN,
Special Assistant to the United States Attorney-General.

HORACE G. STONE,
Counsel for Defendants.

And on to-wit: the 6th day of November, 1906, in the July term, 1906, of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat, judge presiding, there was made by the Court, the following order and entry thereof:

ORDER TO PAY R. H. WYMAN, EXAMINER AND REPORTER, $1,319.55.

United States of America
vs.
Oberlin M. Carter, *et al.*
} Bill, etc. No. 25,980.

It is ordered by the Court that Richard H. Wyman, Special Examiner and Court Reporter in the above stated cause, be paid by the Receiver out of the funds in his hands the sum of Thirteen Hundred and Nineteen Dollars and Fifty-five Cents ($1,319.5 in full for his services and expenses to this date, the said amount to be adjusted as costs between the parties hereafter.

Consented to November 6, 1906.

MARION ERWIN,
Special Assistant to the Attorney General, Complainant's Solicitor.

HORACE G. STONE,
Solicitor for O. M. Carter.

In the Circuit Court of the United States. Northern District of Illinois, Eastern Division.

United States of America, *vs.* Oberlin M. Carter, *et al.* } Bill, etc. No. 25,890.

Account of Richard H. Wyman, Special Examiner, for taking depositions on the part of the Defendant, Oberlin M. Carter, and for the Complainant in rebuttal, as follows:

To Attendance by the Examiner:		
Feb 3, Mar 3-27, Apr 1-3, 1905, Comparing printed records, 52¼ hours		$52.25
Sep 18 to Dec 31, 1905, Reporting, 49 days		245.00
To Transcripts of Testimony: pp. 900/4712 (Less pp. 1877/2060 charged heretofore)		
8992 folios, at 15c per folio		1,348.80
To making 5 copies for attorneys and for use in other Districts:		
8992 folios, each, at 5c per folio		2,248.00
To paid Shea Smith & Co.:		
12 Emerson Binders, for testimony		13.20
To Traveling Expenses:		
Dec. 27-31, 1905, Chicago to New York & Return		71.90
Total		$3,979.15
Contra: By cash, per orders of Court:		
Oct 7, '05	$300.00	
" 21, "	300.00	
Nov 8, "	600.00	
" 22, "	500.00	
Dec 12, "	500.00	
Jan 3, "	1,000.00	3,200.00
To Balance		$779.15
To comparing and correcting printed testimony of defendants, and work on record April 25 to July 20, 1905, 35 days $5		175.00
To Transcript of Testimony, 212 folios at 15c per folio, pp. 4713-4797		31.80
To making 5 copies for attorneys and for use in other Districts, 212 folios, each, at 5c per folio		53.00

To paid Shea Smith & Co.,		
20 Emerson Binders	$22.00	
Marking same	6.85	
Box file (for Vol. 13 of Record)	.25	
		29.10
Total		$1,068.05
Contra: By cash per order of Court:		
June 18, 1906		700.00
To Balance		$368.05

Account of Richard H. Wyman, Court Reporter, employed by agreement of counsel to report the arguments upon the hearing of the above entitled cause before the Hon. Christion C. Kohlsaat, judge of said Court:

To Attendance in Court, reporting arguments:		
Sept. 18 to Oct. 2, 1906, inclusive, 9 days		$45.00
To Transcript of Arguments:		
2982 folios, at 15c per folio, pp. 1/1193		447.30
To making 3 copies for use of counsel,		
2982 folios, each, at 5c per folio		447.30
To paid Shea Smith & Co.,		
8 Emerson Binders	$8.80	
Marking same	3.10	
		11.90
		$951.50

RECAPITULATION.

Due Richard H. Wyman, Special Examiner	$368.05
Due Richard H. Wyman, Court Reporter	951.50
Total	$1,319.55

And on to-wit: the 14th day of January, 1907, came Horace G. Stone and filed in the clerk's office of said court a notice of application for allowance to him of attorneys' fees, and came the complainant and filed objections to such allowance, in the words and figures following, to-wit:

NOTICE OF H. G. STONE OF APPLICATION FOR FEES.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

United States of America
against
Oberlin M. Carter.

To Marion Erwin, Esquire, Solicitor for Complainant.

You will please take notice that on Monday, January 14th, 1907, at 10:00 o'clock in the forenoon, or as soon thereafter as counsel can be heard, I shall apply to his Honor, Christian C. Kohlsaat, Circuit Judge in the above entitled cause, for an allowance on account of fees under the contract of November 6th, 1901.

Dated Chicago, January 12th, 1907.

HORACE G. STONE,
Solicitor for Defendant.

Received copy of the above notice, this 12th day of January, 1907.

MARION ERWIN,
Special Asst. to Atty. General.

'ANSWER OF UNITED STATES.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

United States of America,
vs.
O. M. Carter, *et al.*
} In Equity, Bill, etc.

Application of H. G. Stone, Solicitor for O. M. Carter, for allowance of additional counsel fees on account.

Answer of the United States, by Marion Erwin, Special Assistant to the Attorney General.

In answer to the above application; in view of the allowances heretofore made by the Court to the said solicitor for defendant on account of fees; and in view of the fact that the case has been submitted on argument, and now only awaits the action and decree of the Court on the merits of the case;

It is respectfully submitted that the allowance of further counsel fees should await the decree of the Court on the merits of the case.

Jany 12, 1907.

MARION ERWIN,
Special Assistant to the Attorney General, Solicitor for Complainant.

And on to-wit: the 14th day of January, 1907, in the December term, 1906, of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat, judge presiding, there was made by the Court, the following order and entry thereof:

ORDER TO PAY H. G. STONE $2,500 ON ACCOUNT OF FEES, AND TO SELL CERTAIN BONDS.

United States of America,
vs.
Oberlin M. Carter, *et al.*

On consideration of application of H. G. Stone, Solicitor for Oberlin M. Carter, et al., in the above stated cause, it is ordered by the Court that Max H. Whitney, receiver in the above stated cause, pay over to H. G. Stone the sum of $2,500.00, as an allowance to him on account of solicitor's fees.

It is further ordered that said receiver be authorized to sell $3,000.00 par value of Kentucky Central bonds, at the market price thereof, for the purpose of disbursement on this and such orders of the Court as have been or may hereafter be entered in said cause.

And on to-wit: the 7th day of August, 1907, came the complainant, by Marion Erwin, its solicitor, and filed in the clerk's office of said court an answer to notice of defendant's counsel of application for allowance of fees, in the words and figures following, to-wit:

ANSWER OF UNITED STATES TO NOTICE OF APPLICATION OF H. G. STONE FOR ALLOWANCE OF FEES, AND NOTICE.

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

The United States of America
vs.
Oberlin M. Carter, *et al.*
} In Equity. Bill, &c.

And now comes the United States by Marion Erwin, Special Assistant to the Attorney General, and says:

That complainant's counsel has been served by mail with a notice that on the 7th day of August, 1907, at the Chambers of

His Honor, Judge Christian C. Kohlsaat, in Chicago, Hon. H. G. Stone, principal counsel for defendants, would make an application for an allowance to himself on counsel fees. And for answer to said notice this complainant says:

First: That it has not been served with any petition to the Court setting forth the grounds upon which allowance is asked, nor of the nature of the services rendered, nor of the amount of allowance asked or to be asked, nor otherwise stating any facts which would entitle the defendant or his counsel to ask any allowance in advance of a decision of the Court on the merits of said cause. By reason of which this complainant is unable to answer to any special facts upon which the movant may intend to rely for obtaining such allowance at this time.

Second: That it appears from the record of said cause that upon special petition setting forth defendant's claim of services rendered pendente lite, the Court has heretofore made and allowed to said H. G. Stone amounts which aggregate large sums, and which complainant says were intended to cover all allowances up to final decision on the merits of the cause, when the full value of the compensation of said counsel was to be determined on the whole case.

Third: That the cause having been finally argued and submitted to the Court and having been taken under consideration by the Court for several months, there is every reason to believe that the final decree on the merits of the cause will be rendered by the Court within the next sixty days, and it would not promote the orderly conduct of said cause for the Court to go at this time into the merits of further allowances to defendant's counsel in advance of such decision on the merits of the cause. And that in view of the large allowances already made, the Court should be fully advised and come to a conclusion on the merits of the cause before making additional allowances.

Fourth: Wherefore this complainant says that at this time no further allowance to said defendant's counsel should be made by the Court on account of fees, and objects thereto.

MARION ERWIN,

Special Assistant to the Attorney General, Complainant's Solicitor.

NOTICE.

In the Circuit Court of the United States. Northern District of Illinois, Eastern Division.

United States of America
vs.
Oberlin M. Carter *et al.*

To Marion Erwin,
Solicitor for Complainant:

You Will Please Take Notice, that on Wednesday, August 7th, 1907, I shall apply to his Honor Christian C. Kohlsaat, Circuit Judge of the above Court, at his Chambers in the Federal Building, Chicago Illinois, at 10 o'clock A. M. or as soon thereafter as counsel can be heard for an order directign the Receiver herein, Max H. Whitney, to pay to me, out of the funds in his hands, the sum of $2500.00, on account of my services in the above entitled cause, in accordance with the Contract of November 6th, 1901.

Dated, Chicago, July 26, A. D. 1907.

HORACE G. STONE.

Endorsement. Answer to notice. Filed Aug 7, 1907 H. S. Stoddard Clerk.

And on to-wit: the 7th day of August, 1907, in the July term, 1907, of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat, Judge presiding, there was made by the Court, the following order and entry thereof:

ORDER TO PAY H. G. STONE $1,500 ON ACCOUNT OF FEES, AND TO SELL SECURITIES.

United States of America,
—*vs*—
Oberlin M. Carter *et al.*
} Order.

On due consideration of the petition of Horace G. Stone for an allowance on account of solicitor's fees in the above entitled cause, under the Contract of November 6, 1901,

It Is Ordered, that the said petition is granted, and the Receiver herein, Max H. Whitney, is ordered to pay said sum of Fifteen Hundred ($1500.00) dollars to said Horace G. Stone as aforesaid, out of any moneys in his hands as such Receiver, and in case that said Receiver considers it necessary, he may sell one or more bonds in his hands for the purpose of realizing said money.

And on towit: the 1st day of April 1908 in the December term 1907 of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat Judge presiding, there was made by the Court, the following order and entry thereof:

ORDER TO PAY R. H. WYMAN, REPORTER, $226.85.

United States of America,
vs.
Oberlin M. Carter *et al.* } No. 25,980.

It is ordered by the Court that Richard H. Wyman, Court Reporter in the above stated cause, be paid by the Receiver out of the funds in his hands, the sum of Two Hundred Twenty-six Dollars and Eighty-five Cents ($226.85) in full for his services and expenses to this date; the said amount to be adjusted as costs between the parties.

Consented to April 1 1908.

MARION ERWIN
Special Assistant to the Attorney General;
Complainant's Solicitor.

HORACE G STONE
Solicitor for Oberlin M. Carter.

United States of America,
vs.
Oberlin M. Carter *et al.* } No. 25,980.

Account of Richard H. Wyman, Court Reporter, for reporting arguments and proceedings upon the hearing of motion to settle decree:

Feb. 21 & 24/08	
To attendance by reporter, 2 days $5.....	$ 10.00
To transcript of arguments, pp. 1/340—850 folios 15c	127.50
To making 2 copies for use of attorneys: 1700 folios at 5c per folio.....	85.00
To paid Shea Smith & Co.: 3 patent binders & marking same	4.35
	$226.85

Endorsement Filed April 1, 1908 H. S. Stoddard Clerk.

And on towit: the 6th day of April 1908 in the December term 1907 of said Court, in the record of proceedings thereof, in said entitled cause before the Honorable Christian C. Kohlsaat Judge presiding, there was made by the Court, the following order and entry thereof:

ORDER TO PAY GUNTHORP-WARREN PRINTING CO. $1486.90.

United States
vs.
O. M. Carter *et al.* } In Equity No. 25980.

Horace G. Stone, counsel for Oberlin M. Carter, defendant, having presented the bill of the Gunthorpe-Warren Printing Company, for printing for the said Oberlin M. Carter, briefs and other things pertaining to the proper conduct of his defense in said cause, not included in bills previously paid, and aggregating $1,486.90, it is ordered by the Court that Max H. Whitney, receiver, pay said Gunthorpe-Warren Printing Company, out of the assets in the hands of said receiver said sum of $1,486.90, taking the receipt of the said Gunthorpe-Warren Printing Company therefor, the said payment to be adjusted between the parties to the cause as their rights may appear.

Consented to
HORACE G. STONE
Solicitor for O. M. Carter.
MARION ERWIN
Solicitor for Complainant.

April 6, 1908

Chicago March 26, 1908

Horace G. Stone
In account with
The Gunthorp-Warren Printing Company
196 & 198 Clark Street

1904				
Dec 28	50 Private Memo			
	31 pp	a 75 c	$23.25	
	6 hrs corrections	a 60 c	3.60	$26.85
	31 Additional Memoranda			
	23 pp	a 75 c		17.25

1905					
Jan 5	Additional Memoranda				
	28 pp	a 75 c			21.00
Feb 24	200 Informal Statements				
	9 pp	a 1.20			10.80
1906					
Aug 23	100 References to Testimony				
	100 Copies Witnesses etc				
	490 pp	a 90		441.00	
	86 pp	a 90		77.40	
	8 pp Index & cover	a 1.00		9.00	
	8 pp Index & cover	a 1.00		9.00	
	434 M Ems	a 50 c		217.00	
	193 hrs corrections	a 70 c		135.10	888.50
Aug 28	50 Defendant Carters' Request for Findings				
	163 pp	a 1.20	195.60		
	6 " Index	a 1.50	9.00		
	110 hrs corrections	a 70 c	77.00		
	48 " Overtime	a 1.20	57.60		
	30 Copies June 19, 1906		28.80		368.00
Oct 2	100 Arguments of Judge Sears				
	32 pp	a 90 c			28.80
1908					
Feb 14	100 Opinions				
	38 pp	a 1.00			38.00
28	100 Briefs				
	41 pp	a 90 c	36.90		
	8 hrs corrections	a 75 c	6.00		
	10 hrs overtime	a 1.05	10.50		53.40
Mch 14	100 Supp'l Brief				
	12 pp	a 90 c	11.80		
	6 "	" 1.50	9.00		
	7 1-2 hrs overtime	a 1.05	7.50		28.30
Mch 25	50 Copies Decrees				
	8 pp	a 75 c			6.00
					$1486.90

U. S. A. vs Oberlin M. Carter.

Endorsement Filed April 6, 1908 H. S. Stoddard Clerk.

And on towit: the 6th day of April 1908 came H G Stone Solicitor, and filed in the clerks office of said Court an account in the words and figures following towit

ACCOUNT OF CHARLES McPHERSON, EXPERT ACCOUNTANT FOR DEFENDANTS.

Detroit, Mich., Oct. 1, 1906.

Capt. O. M. Carter, Dr.

In account with Charles McPherson.

1904				
March	16	Time at Chicago with Mr. Stone,		$10.00
"	"	Expenses to Chicago,		6.25
		Sleeping cars,	$4.00	
		Meals,	2.25	
"	31	Time at Detroit,		10.00
April	25	2½ hrs.		
"	26	3 "		
		5½ " @ $10.00 per day of 7 hrs.		7.93
May	31	Time in May,—		45.00
		31½ hrs.=4½ days.		
June	1	Expenses on trip to Chicago,		5.00
"	30	Time in June,		74.29
		52 hrs.=7-3/7 days.		
"	30	Cash paid for Journal,		1.05
July	31	Time in July,		29.29
		20½ hrs.=2-13/14 days,		
"	1	Stationery,		.50
Aug.	31	Time in August,—		265.00
		185½ hrs.=26½ days.		
Aug.	10	Expenses on trip to Chicago,		2.90
"	31	" " " " "		5.10
"	31	Express charges on package sent to O. M. Carter,		.25
"	31	Cash paid for Journal & Stationery,		1.50
Sept.	30	Time in September,		57.14
		40 hrs.=5-5/7 days.		
"	1	Express on package to O. M. Carter,		.25
"		Stationery,		.50
"	2	Cash paid for Journal,		1.75
Oct.	31	Time in October,		92.14
		64⅓ hrs.= 9-3/14 days.		
Nov.	30	Time in November,—		67.14
		47 hrs.=6-5/17 days.		
"	30	Paid cash for Journal,		1.05

Dec.	31	Time in December,—			201.43
"	1	Expenses on trip to Chicago,—			3.00
"	25	" " " " "			18.30
to	30	Street cars,		$ .25	
		R. R. fare		6.75	
		Sleeping cars,		4.00	
		Room and meals,		7.30	
1905					
Jan.	31	Time in January,—			137.14
		96 hrs.=13-5/7 days.			
Jan.	8	Expenses on trip to Chicago,—			32.20
to	12	R. R. fare,		13.50	
		Sleepers,		4.00	
		Room,		6.00	
		Meals,		8.50	
		St. cars,		.20	
Jan.	15	Expenses on trip to Chicago,—			18.70
to	20	Sleeper,		4.00	
		Room,		6.00	
		Meals,		8.50	
		St. Cars,		.20	
Jan.	31	Express charges on package sent H. G. Stone,			.35
Feb.	28	Time in February,—			35.71
		25 hrs.=3-4/7 days.			
Feb.	2	Postage on package to H. G. Stone,			.10
"	8	Telegrams to H. G. Stone,			.60
"	10	Expenses on trip to Chicago,—			5.70
		Sleeper,		4.00	
		Meals,		1.50	
		St. cars,		.20	
"	22	Expenses on trip to Chicago,—			5.25
		Telephone,		1.00	
		Sleeper,		2.00	
		Meals, etc.,		2.25	
March	31	Time in March,—			22.85
		16 hrs.=2-2/7 days.			
March	20	Telegrams to H. G. Stone,			.25
"	21	Expenses to Chicago			8.00
		Sleeper,		$4.00	
		Meals,		2.50	
		Room,		1.50	
April	27,	7 hrs. at Chicago,			10.00
		Expenses to "			6.00

Sept.	30	Time in September,—		25.00
		17½ hrs.=2½ days.		
"	21	Expenses on trip to Chicago,		7.00
		Sleeper,	4.00	
		Meals, etc.	3.00	
Oct.	15	Time in October,		110.00
		11 days.		
"	14	Expenses on trip to Chicago,—		35.00
to	21	Sleeper,	4.00	
		St. cars,	.50	
		Hotel and meals,	30.50	
Oct.	22	Expenses on trip to Chicago,		6.25
to	24	Sleeper,	4.00	
		Meals,	2.25	
Oct.	24	Telegram to H. G. Stone,		.35
Oct.	25	Expenses on trip to Chicago		10.00
to	29	Sleeper,	4.00	
		Meals,	6.00	
Oct.	30	Telegram to H. G. Stone,		.27
Nov.	30	Time in November,		70.00
		7 days in Chicago,		
Oct.	31	Expenses on trip to Chicago,		18.00
to Nov.	3	Sleeper,	4.00	
		Meals,	8.00	
		Hotel,,	6.00	
Nov.	5	Expenses on trip to Chicago,		14.00
to	9	Sleeper,	4.00	
		Meals,	6.00	
		Hotel,	4.00	
Nov.	23	Expenses on trip to Chicago,		6.50
to	25	Sleeper,	4.00	
		Meals,	2.50	
Dec.	31	4 days reading my testimony,		40.00
1906				
Feb.	8	Time at Chicago,		10.00
		Expenses to Chicago,		5.00
Feb.	24	Time at Chicago,		10.00
		Expenses to Chicago,		4.00
May	14	Time preparing statement for brief,		5.00
Aug.	18	Time at Chicago,		10.00
		Expenses to Chicago,		4.75
				$1,580.73

Endorsement Filed April 6, 1908 H S Stoddard Clerk.

And on towit: the 6th day of April 1908 in the December term 1907 of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat Judge presiding, there was made by the Court, the following order and entry thereof:

ORDER TO PAY CHARLES McPHERSON, EXPERT ACCOUNTANT FOR DEFENDANT, $1580.73.

United States
vs.
O. M. Carter *et al.* } In Equity No. 25980.

Horace G. Stone, counsel for Oberlin M. Carter, defendant, having presented the bill of Charles McPherson, expert accountant, for services rendered to said Oberlin M. Carter in the preparation and taking of evidence of said case, aggregating the sum of One Thousand Five Hundred and Eighty Dollars and seventy-three cents, ($1,580.73), it is ordered by the Court, that Max H. Whitney, receiver, pay to the said Charles McPherson or to said Horace G. Stone for him, taking a receipt therefor, the said sum of $1,580.73, the said payment to be adjusted between the parties to the cause as their rights may appear.

Consented to
HORACE G. STONE
Counsel for O. M. Carter.
MARION ERWIN
Counsel for Complainant.

April 6, 1908

And on towit: the 15th day of April 1908 in the December term 1907 of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat Judge presiding, there was made by the Court, the following order and entry thereof:

ORDER TO PAY R. H. WYMAN, REPORTER, $56.

United States of America,
vs.
Oberlin M. Carter *et al.* } No. 25,980.

It is ordered that Max H. Whitney, Receiver, pay to Richard H. Wyman, the sum of Fifty-six Dollars for taking and reporting the arguments of counsel and rulings of the Court on the hearing had on Monday, April 13th, 1908; The same to be paid out of any moneys in the hands of said Receiver coming from the assets decreed to belong to the United States.

Consented to April 14th, A. D. 1908.

MARION ERWIN
Special Assistant to the Attorney-General;
Complainant's Solicitor.

HORACE G STONE
Solicitor for Oberlin M. Carter.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

In Equity.

United States of America,
vs.
Oberlin M. Carter *et al.* } No. 25,980.

Account of Richard H. Wyman, Court Reporter, for reporting arguments and rulings of the Court upon the hearing of motion to settle decree:

April 13/1908	To Attendance by reporter, 1 day,	$ 5.00
	To Transcript of Proceedings: pp. 170 folios 15c	25.50
	To making 3 copies for use of attorneys: 510 folios at 5c per folio	25.50
		$56.00

Endorsement Filed April 15, 1908 H. S. Stoddard Clerk.

And on towit: the 1st day of April 1908 came Horace G. Stone and filed in the clerks office of said court a petition in the words and figures following towit:

PETITION OF H. G. STONE FOR ALLOWANCE OF FEES.

In the Circuit Court of the United States, For the Northern District of Illinois, Eastern Division.

United States
vs.
Oberlin M. Carter *et al.* } Gen. No. 25980.

Petition of Horace G. Stone for Allowance of Solicitor's Fees Under Contract of November 6, 1901, Approved by the Court.

To the Hon. Christian C. Kohlsaat,
Circuit Judge of said Court:

Your petitioner Horace G. Stone, respectfully shows and states to your Honor as follows: On November 6, 1901, a contract was made between the complainant of the one part and the defendants Oberlin M. Carter, Lorenzo D. Carter and I. Stanton Carter of the other part, by which it was agreed among other things, that there should be paid out of the money in controversy, the solicitor's fees of the chief counsel for said Oberlin M. Carter, regardless of whether said Carter won or lost in said case. Said contract being in part as follows:

"The fees, traveling expenses and other expenses of Oberlin M. Carter's Chief Counsel and of his attorney at Chicago, to be fixed and allowed by the Court."

Subsequent to the making of said contract it was approved by the Court in the above entitled cause.

Among other things agreed in said contract, it was provided in effect, that the litigation as to all the money and property in controversy between the complainant and the defendants in other suits pending in other courts of the United States should be litigated and settled in the above entitled cause, so that all said money and property in litigation here

and elsewhere, was put under the exclusive jurisdiction of this court. The amount claimed by the complainant in all said suits was about $700,000. and all thereof was in litigation in the above entitled cause, as the contract provided that the final order in the above entitled cause should be the final order in all said suits. Said contract did not limit the solicitor's fees of said chief counsel to any per cent. of the amount involved, nor did it fix any maximum amount for said fees, but it left it to said chief counsel to determine what work he thought necessary to defend said suits, and agreed that he should be paid in full therefor out of the money in controversy.

Your petitioner further says: I have been chief counsel for the defendant Oberlin M. Carter in said cases, since October 5, 1901, a period of about 2,000 working days. As soon as I commenced I found that the important transactions involved were so numerous and so complicated, that I must give it practically all of my time, which I did. I often worked at night on it and overtime, and what I did outside the Carter case was more than offset by the night work and overtime work. So that I have spent substantially as much as 2,000 days regular work on these cases. The complainant desired to introduce the testimony and original exhibits before the Board of Engineers and before the Court Martial and before the Court at New York in the Removal Proceedings against Greene & Gaynor, and I had to go over all of those extensive records with great care, and then all of such testimony and evidence was admitted and used in the present cases, except the testimony of two witnesses, and it had to be carefully considered in handling the present cases, and with the new evidence taken in the present cases, the court estimates the record as "covering about 50,000 pages," and the court says that so much work was done upon it by both sides "that the court is relieved of the burden of several years of reading." I was the only attorney for the defendants who went through the entire record, and took the responsibility of selecting such parts of it as ought to be particularly presented to the court, and to do that on a record of 50,000 pages required great labor and careful attention. The questions at issue involved great and complicated works of harbor engineering and involved the most complicated questions of expert accounting with regard to vast sums covering a period of ten years, all of which questions I had

to study out with great care and thoroughness and with the very best efforts which could be brought to bear, so that I could examine the witnesses and present it to the court intelligently and properly.

In taking evidence in the case I saved the complainant much labor and expense and expedited matters by admitting in evidence ex parte affidavits obtained by the complainant from numerous sources, instead of insisting as I might, on taking testimony in the usual way, and at all times I have tried to expedite the case as much as possible. The outcome of the case justified all the labor which I put upon it. and the result thereof was of inestimable value to the principal defendant, Oberlin M. Carter.

The case was tried before the court in September and October, 1906, and the labor and strain in such a trial and in the preparation for it was so great that a long rest thereafter was absolutely necessary. Then in 1907 the court asked each side to submit what was equivalent to a condensed reargument of the entire case, and after that was done a decision was expected and I had to review the case preparatory to proceedings after the decision, and besides with a record of 50,000 pages, to throw it off my mind and take up other important work was practically impossible, and not even advisable, when a decision might be rendered any day, or the court might ask for additional abstracts, etc., and so I was compelled to give my time to this case from the trial until now, except a few trifling matters. The complainant realized the necessity of constant attention here by keeping Mr. Johnson here most of the time.

As to the value of my services per day, I realize that it was for a long period and hence that the rate per day should be less than for a short period, but the necessities of the work required me to throw aside practically all business which would have naturally come to me. My receipts from my profession for the five years ending about the time I took up the present cases were considerably more than an average of $15,000 per year, i. e. $50 per day. Since then such receipts have been very little comparatively, because I could not take other business and do my full duty to the present cases.

Under such circumstances, I consider $50 per day only one-half what my services were worth, considering my practice when I commenced the present cases, and the loss of that practice and the frightful strain for the past six years in carrying a record of 50,000 pages with the prestige and force

of the Government against me, and the decisions of the Board of Engineers and Court Martial and the President, and the decisions in the Greene & Gaynor cases against me: but I am willing to take $50 per day for said 2,000 days if I get it without a contest, but if there is a contest I claim $100 per day and ask leave to produce witnesses as to the full value of my said services and as to the reasons which compelled me to do a large amount of extra work in said cases.

Respectfully submitted,

HORACE G. STONE.

Dated Chicago, February 19, 1908.

Endorsement: Filed April 1, 1908. H. S. Stoddard, Clerk.

And on to-wit: the 9th day of April, 1908, came the said H. G. Stone and attached to said petition and filed in the clerk's office of said Court certain affidavits in the words and figures following, to-wit:

AFFIDAVIT OF H. G. STONE.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

United States
vs.
Oberlin M. Carter, *et al.* } Gen. No. 25980.

State of Illinois, }
Cook County. } ss.

Horace G. Stone, being first duly sworn on oath deposes and says, that he rendered all of the services described in the foregoing petition, dated February 19, 1908, that he did so in pursuance of and relying upon said contract of November 6, 1901, which contract and the order of court ratifying and approving the same this affiant refers to and makes a part hereof.

This affiant further says, that it was necessary in order to properly defend said case, to render all the said services described in said petition, and this affiant did render said services in good faith, in the full belief that he was doing his duty in the premises.

This affiant further says that the fair value of said services

was at least one hundred thousand dollars, which said amount is justly due and owing to this affiant, less seventeen thousand five hundred dollars heretofore received by this affiant on account of said services.

HORACE G. STONE.

Subscribed and sworn to before me this 9th day of April, A. D. 1908.

MARY L. DOWNES,
Notary Public.

(Seal)

AFFIDAVIT OF W. W. GURLEY.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

United States
vs.
Oberlin M. Carter, *et al.* } Gen. No. 25,980.

State of Illinois,
County of Cook. } ss.

William W. Gurley being first duly sworn on oath deposes and says:

That he is now and for over 30 years has been a practicing lawyer in the City of Chicago, and for at least the last 20 years of that period he has been familiar with the amount and value of solicitors' fees in important litigation. Deponent further says:

I have read the petition dated February 19, 1908, in the above entitled cause, of Horace G. Stone for solicitor's fees under the said contract of November 6, 1901. I have personal knowledge of much of Mr. Stone's work in the said cause, as we occupied the same law offices for the eleven years ending May 1, 1906, and we have occupied offices in the same building since that date. I have known Mr. Stone intimately for over a third of a century and am familiar with his law practice during that period, as we have mutually discussed our cases and have had many important cases together. From such mutual discussion of the Carter case and from other sources I am generally familiar with his work in said Carter case, and with the facts stated in his said petition, and in my opinion he is entitled to receive either $50 per day from Oc-

tober 5, 1901, to the present time, i. e., about $15,000 per year, or if his services are reckoned by the day for each day actually given to said case, then his said services are worth $100 per day. From my knowledge of the case I think Mr. Stone was fully justified in giving all his time to said case from October 5, 1901, as the record of 50,000 pages and the great and intricate questions involved and other matters of importance, made it necessary for him, in order to do his duty to his client, to practically lay aside all other business and devote his entire time to said case.

WILLIAM W. GURLEY.

Subscribed and sworn to before me this 10th day of March, 1908.

WILL H. CLARKE,
Notary Public.

(Seal)

AFFIDAVIT OF JOHN J. HERRICK.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

United States
vs.
Oberlin M. Carter, *et al.* } Gen. No. 25980.

State of Illinois,
County of Cook. } ss.

John J. Herrick, being first duly sworn, on oath deposes and says:

That he is now, and for over thirty-six years past has been, a practicing lawyer in the City of Chicago, and for at least the last thirty years of that period, he has been familiar with the amount and value of attorneys' fees in important litigation; that he has read the petition, dated February 19, 1908, in the above entitled cause, of Horace G. Stone, for attorney's fees under the said contract of November 6, 1901; that he has also read the affidavit of William W. Gurley in said cause, subscribed and sworn to by said Gurley on the 10th day of March, 1908; that he has also had a personal acquaintance with said Stone for many years past, and has a personal knowledge as to the ability, and character of the work, of said Stone as an attorney, by reason of

such acquaintance and his professional relations with said Stone, and from briefs prepared by said Stone which he has had occasion to read; that, assuming that the facts as to the nature and character of the legal services rendered by said Stone are correctly set forth in said petition, affiant is of the opinion that said Stone is entitled to receive either $50 per day from October 5, 1901, to the present time, i. e. about $15,000 per year, or if his services are reckoned by the day for each day actually given to said cause, then his said services are worth $100 per day.

JOHN J. HERRICK.

Subscribed and sworn to before me this 11th day of March, A. D. 1908.

FRANK JULIUS SMITH,
Notary Public.

AFFIDAVIT OF N. C. SEARS.

In the Circuit Court of the United States for the Northern District of Illnois, Eastern Division.

United States
vs.
Oberlin M. Carter, *et al.* } Gen. No. 25980.

Nathaniel C. Sears being first duly sworn deposes and says, that he has been a practicing lawyer in the City of Chicago for more than thirty years last past, except for such part of said period as was covered by his service on the Bench of the Superior Court of Cook County, or the Appellate Court for the First District of Illinois; that he is familiar with the customary and reasonable charges of practicing attorneys in large and important cases in this jurisdiction; that he has read the petition, dated February 19, 1908, of Horace G. Stone, Esquire, for attorney's fees in the above entitled cause under contract of November 6, 1901; that he has also read the affidavit of William W. Gurley, Esquire, filed in support of said petition; that he has had a personal acquaintance with the said Horace G. Stone, Esquire, for many years past and has personal knowledge of the ability of the said Horace G. Stone, Esquire, as a lawyer; that he has been engaged in the above entitled cause as attorney of said Oberlin M. Carter in Chicago in assisting the said Horace G. Stone,

Esquire, chief counsel of the said Oberlin M. Carter in said cause; that he has thus become familiar to a considerable extent with the nature, character and extent of the legal services rendered by said Horace G. Stone, Esquire, in said cause; from the said knowledge of affiant, and assuming in connection therewith that the facts as to the nature, character and extent of the legal services rendered by the said Horace G. Stone, Esquire, are correctly set forth in his said petition, this affiant is of opinion that a customary and reasonable charge for the legal services of said Horace G. Stone, Esquire, would be not less than One Hundred Dollars ($100) per day for the time actually expended in such legal services, and that a charge of $15,000.00 per year, that is to say $50.00 per diem, covering the entire time of the engagement of said Horace G. Stone, Esquire, in said litigation from October 5, 1901, would be an exceedingly reasonable charge for said services, and that in the opinion of affiant, said Horace G. Stone, Esquire, is entitled to receive at least the above specified amounts as fees.

NATHANIEL C. SEARS.

Subscribed and sworn to before me this 16th day of March, A. D. 1908.

FRED L. BLACKINGTON,
Notary Public.

(Seal)

AFFIDAVIT OF JOHN S. MILLER.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

United States
vs.
Oberlin M. Carter, *et al.* } Gen. No. 25,980.

State of Illinois,
County of Cook. } ss.

John S. Miller, being first duly sworn, on oath says, that he is now and for upwards of thirty years last past has been a practicing lawyer in the City of Chicago, in said County, District and State, and that he is familiar with the reasonable and customary charges of practicing attorneys in said City of Chicago in cases of importance; that he has

read a copy of the petition in this case of Horace G. Stone, dated February 19, 1908, for the allowance of solicitor's fees, and has also read the affidavits of Messrs. Gurley, Sears and Herrick in support of said petition; that affiant has for many years had personal acquaintance with the said Horace G. Stone and with his standing at the bar of Chicago; that from the facts known to affiant as aforesaid, and those appearing in the said petition, this affiant is of the opinion that a reasonable and customary charge for the professional legal services of said Horace G. Stone in the case and matter therein referred to would be one hundred dollars per day for the time actually expended by him in such legal services, and that a charge of fifteen thousand dollars per year for the entire time of the engagement of said Stone in said litigation from October 5, 1901, to the termination thereof would be a very reasonable and moderate charge for said services.

JOHN S. MILLER.

Subscribed and sworn to before me this 18th day of March, A. D. 1908.

R. E. SCHREIBER,
Notary Public.

(Seal)

AFFIDAVIT OF JOHN P. WILSON.

In the Circuit Court of the United States, for the Northern District of Illinois.

United States
vs.
Oberlin M. Carter, *et al.* } Gen. No. 25980.

State of California,
County of Los Angeles. } ss.

John P. Wilson, being first duly sworn, on oath deposes and says:

That he is now, and for over forty years past has been, a practicing lawyer in the City of Chicago, and that for many years he has been familiar with the amount and value of attorney's fees in important litigation; that he has read the petition, dated February 19th, 1908, in the above entitled cause, of Horace G. Stone, for attorney's fees under the said contract of November 6th, 1901; that he has also read the

affidavit of William W. Gurley in said cause, subscribed and sworn to by said Gurley on the 10th day of March 1908; that he has also had a personal acquaintance with said Stone for many years past and has a personal knowledge as to the ability and character and the work of said Stone as an attorney; that, upon the assumption that the facts as to the nature and character and amount of the legal services rendered by the said Stone are correctly set forth in said petition, affiant is of the opinion that fifteen thousand dollars per year from October 5th, 1901, to the present time would be no more than a reasonable compensation for his professional services in the above entitled cause.

JOHN P. WILSON.

Subscribed and sworn to before me this 26th day of March, A. D. 1908.

(Seal) S. G. CRUICKSHANK,
Notary Public in and for the County of Los Angeles, State of California.

And on to-wit: the 8th day of April, 1908, came the United States by Marion Erwin, its solicitor, and filed in the clerk's office of said court an answer to the petition of H. G. Stone, filed April 1, 1908, for allowance of fees, in the words and figures following, to-wit:

ANSWER OF UNITED STATES TO PETITION OF H. G. STONE FOR ALLOWANCE OF FEES.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

United States
vs.
Oberlin M. Carter, *et al.* } Gen. No. 25980.

Petition of Horace G. Stone for allowance of solicitor's fees. Answer of the United States to said petition.

And now comes the United States, by Marion Erwin, special assistant to the attorney general, and for answer and response to the petition of Horace G. Stone in the above stated matter says:

(1)

Respondent admits that there was an agreement made between complainant on the one part and the defendants,

Oberlin M. Carter, Lorenzo D. Carter and I. Stanton Carter, on the other part, on November 6, 1901, which was reduced to writing, approved by the Court, and made a part of the record of the above entitled cause, and it refers to said written agreement for a more accurate statement of the terms thereof and the construction which should be placed upon it than is stated in said petition.

Respondent admits that said H. G. Stone has been chief counsel for the said Oberlin M. Carter from about October 5, 1901, to the present time in the civil suits, brought by the government, referred to in said agreement.

(2)

Respondent denies that there has been such full compliance on the part of said Oberlin M. Carter, Lorenzo D. Carter, and I. Stanton Carter with the terms of said agreement of November 6, 1901, as entitles the said defendants or their counsel to invoke the said clause of said agreement numbered "(8)", under which said petition is brought: In this, that said agreement in its second paragraph provided among other things:

"(2) That as to the assets claimed by the Government as assets into which it charges the funds intrusted to Oberlin M. Carter as disbursing officer was diverted, with the proceeds, income and re-investments thereof where the form of the investments have been changed, and which assets have or may be hereafter traced into the possession, custody or control of said defendants and have not heretofore been bona fide disposed of by them and therefore beyond their control, shall be forthwith by the said defendants turned over to the receiver appointed in this cause."

And the fourth paragraph provided

"(4) L. D. Carter and I. Stanton Carter will forthwith dismiss their demurrers and file answers disclaiming any personal interest in the aforesaid assets in controversy in this litigation, including the real estate on 8th Avenue, New York, and at Orange, New Jersey, except as to the two bonds claimed by I. S. Carter as above."

(Another clause of the agreement provided for the determination by the Court as to whether I. S. Carter purchased the two bonds with his own funds.)

That the said agreement in the eighth paragraph provided among other things:

"(8) From said fund to be accounted for to the receiver there shall be paid:

(a) The fees, traveling expenses and other expenses of Oberlin M. Carter's chief counsel and of his attorney at Chicago, to be fixed and allowed by the Court. The importance of the case, and the means and methods taken to bring the same to a just determination speedily, and not the length to which the proceedings may be protracted, to be considered as the elements of merit in fixing such fees."

That said agreement by its ninth paragraph provided:

"(9) The assent of the United States to paragraphs numberer "(1)", "(7)" and "(8)" of this agreement, is predicated upon the understanding that the said defendants will turn over to the receiver at least substantially all the assets turned over to I. Stanton Carter and L. D. Carter by J. H. Paul and R. E. Westcott and James Bragg or their proceeds and re-investments, except such as has been, prior to the receivership, bona fide paid out or pledged by them for attorneys' fees or as expenses in defense of Carter, or expended by them legitimately in the handling of said properties, or which has not already been taken possession by the receivers in this cause."

(3)

That prior to the agreement of November 6, 1901, there had been already tied up in the hands of the receivers in the auxiliary suits in the other districts assets claimed by the Government aggregating at cost and proceeds in money (See Decree March 21, 1908) as follows:

Southern District of New York under order of July 30, 1901		$29,294.71
District of New Jersey under order of July 31, 1901		52,567.13
Southern District of West Virginia under order of September 16, 1901		190,571.58
And by injunction against the companies in Southern District of Georgia under bill filed and order of August 6, 1901:		
Propellor Towboat Company stock cost	$12,275.00	
Savannah Lighterage & Transfer Company stock cost	1,450.00	
Savannah Brewing Company stock cost	2,188.50	15,913.50
		$288,346.92

And respondent says that at the time of the agreement of November 6, 1901, it was well known to both parties that the complainant had knowledge of the fact that R. E. Westcott, J. H. Paul and James F. Bragg of New York had acted as agents for Oberlin M. Carter in the handling of a large part of the assets in controversy, and had remitted rents and proceeds of the real estate to I. Stanton Carter and L. D. Carter, and had on or about May 23, 1900 turned over stocks, bonds and other choses in action claimed by the complainant aggregating at par $349,475.00 to O. M. Carter's two brothers, Ditson P. Carter of the Southern District of West Virginia and defendant, I. Stanton Carter of Chicago. The receipt of said I. Stanton Carter and Ditson P. Carter dated May 23, 1900, being in evidence as Exhibit 3 before Booth, special master, with the affidavit of J. H. Paul dated October 15, 1901, thereto attached, which receipt and affidavit had been by complainant exhibited to this Court in the hearing had on October 28, 1901, before the Court on a motion to appoint a special master to take of transcripts of the accounts of Frank P. Blair in certain banks in Chicago, for use in the rule then pending before the Court against I. Stanton Carter and L. D. Carter for contempt of court for failure to turn over assets to the receiver, and respondent says that the said agreement is to be interpreted in the light of the then existing conditions. That of said securities described in said receipt of May 23, 1900, the complainants had already tied up in other districts all but $161,275.00 par value of the said securities and choses in action.

That it was to bring into the hands of the receiver the balance of the aforesaid assets and proceeds and reinvestments thereof claimed by the Government as described in Exhibit E to complainant's bill, together with $23,000 proceeds of a mortgage on the 8th Avenue, New York, property, charged to have been received by I. Stanton Carter as described in paragraph (9) of the bill, some $3,000 rents collected by I. Stanton Carter through J. F. Bragg from the 8th Avenue, New York, property, and Orange, N. J. property as described in paragraph (10) of the bill, and some $950.00 of coupons collected by I. Stanton Carter as described in paragraph (11) of the bill, some $2,200.00 of rents collected by L. D. Carter through J. F. Bragg from the 8th Avenue, New York, property, and Orange, N. J., property, as described in paragraph (12) of the bill, that the rule for contempt against the defendants, I.

Stanton Carter and L. D. Carter for failure to turn over assets to the receiver, was then pending upon the calendar of this Court, the said assets at a maximum not exceeding $190,425.00.

(4)

And respondent says that the essence of the assent of the United States to the 7th and 8th clauses of the agreement, as stated in the 9th paragraph of said agreement, was that the assets claimed by the Government, in its said suits, which were turned over to I. Stanton Carter and to L. D. Carter by J. H. Paul, R. E. Westcott and James Bragg, and the proceeds and re-investments thereof, in the custody or control of said defendants, and which had not therefore been bona fide disposed of by them and therefore beyond their control, should be forthwith by the said defendants turned over to the receiver, thus relieving the Government of the expenses, delays, and the incidents attendant upon judicial proceedings to force from the defendant into the possession of the receivers, the assets which they were withholding, and at the same time to secure said assets to answer the final judgment of the Court.

And respondent says that by the 9th clause of the agreement, it is made plainly to appear that the consideration to the United States for its assent to clause 8 of the agreement was the turning over to the receiver forthwith the aforesaid assets and proceeds aggregating some $190,425.00 or so much thereof as had not been bona fide paid out or disposed of and so placed beyond the power, custody and control of said defendants.

And deponent says that the said defendants did not in fact forthwith turn over the said assets to the receiver which by their said agreement they undertook to do, but on the contrary they withheld a large part of said assets from the receiver, so that complainant was forced to obtain an order of reference to Special Master Booth in his cause, to take evidence and report on the assets so withheld, and to go through extended judicial proceedings lasting through many months, before under the rulings of the master and the decree of the Court the said I. Stanton Carter and L. D. Carter surrendered to the receiver $21,000.00 of Kentucky Central bonds claimed specifically in the bill as a re-investment of the proceeds of said assets and which by said agreement they were forthwith to surrender to said receiver, free from

all claims of said I. Stanton Carter and L. D. Carter. That instead of filing answers to the bill as provided in the 4th paragraph of the bill disclaiming any personal interest in the aforesaid assets in controversy the said I. Stanton Carter and L. D. Carter set up before the said Master alleged liens for salaries alleged to be due them from O. M. Carter aggregating $22,000.00 against the assets in their hands, and continued to contend for the same until the final decree of this Court on the merits.

That in addition the said defendant, I. Stanton Carter has never yet paid over the sum of $11,454.18 of the proceeds of said assets so found by the Special Master and by the decree of this Court to have gone into his hands and never accounted for from the funds which by the agreement and orders of the Court he was to turn over to the receiver, in addition to $6,750.00 credited by the Master as salary. And in addition the said defendant, L. D. Carter, has never yet paid over the sum of $7,577.04 of the proceeds of said assets so found by the Special Master to have gone into his hands and never accounted for, but as against which under the finding of the special master he was allowed to offset a salary claim due him by said O. M. Carter. By reason of the premises respondent says that the said I. Stanton Carter and L. D. Carter have not complied with the conditions entitling the defendants and their counsel to the benefits of paragraphs (7) and (8) of said agreement of November 6, 1901. But instead thereof a very large part of the claims for fees now made by the said chief counsel for the defendants for fees, is for services rendered in fighting the delivery to the receiver of said assets which were by said agreement forthwith to be delivered to the receiver, and in asserting personal claim in behalf of said L. D. Carter and I. Stanton Carter against said assets, thereby forcing complainant to proceed to judicial process to obtain through long delays, trouble and expense that which by said agreement was to be forthwith voluntarily surrendered, as a consideration for the provisions of paragraphs (7) and (8) of said agreement.

And respondent says that in the interlocutory decree of this Court, rendered January 7, 1904, on exceptions to said Special Master's report, this Court decreed that when I. Stanton Carter and L. D. Carter should surrender to the receiver the Kentucky Central bonds and coupons thereon, and the Michigan Telephone Company bond and coupons thereon which they had withheld, that "They will have sufficiently

accounted to the receiver as far as they should be required on this interlocutory proceeding for the assets remaining in their hands to put in operation clauses one (1), seven (7) and eight (8) of the agreement of November 6, 1901."

But said decree expressly reserved for the final decree on the merits the questions raised by both sides by exceptions to the Master's report, as to whether there had been a full accounting by said I. S. Carter and L. D. Carter for the assets for which they were accountable under said agreement and the orders of the court and the question of their right to claim salaries against the funds turned over to the receiver or for which they might be held accountable. That by reason of the premises, respondent says that this Court has not yet decided whether there has been such a full compliance with the terms of the agreement of November 6, 1901, as entitles the defendants to invoke paragraphs (7) and (8) of the said agreement.

(5)

And this respondent says that in any event as it is advised it would be unconscionable to charge against any part of the fund decreed to belong to complainant the attorneys fees of defendants' counsel in the extended judicial proceedings incident to the reference to Special Master Booth and growing out of the same, made necessary by the refusal of the defendants L. D. Carter and I. S. Carter to turn over, as provided by paragraphs (2) and (9) of said agreement, all the assets they so agreed to turn over, especially since as a result of said proceeding they were compelled at the end of the proceeding to surrender $23,000.00 of bonds held back from the receivers, and $11,454.18 of said assets were held by the master and this court not yet accounted for by I. Stanton Carter.

(6)

And for further response to said petition this respondent says that of the said assets aggregating $190,425.00 which, or as much of which as had not been bona fide paid out or disposed of so as to be beyond the control of the said defendants, which it was contemplated by said agreement of November 6, 1901, the said defendants were to turn over to the receiver before the assent of the United States to paragraphs (7) and (8) of said agreement was to be binding, the said defendants turned over to the receivers in said cause assets as follows:—

1901	(In Southern Dist. of Illinois)	Par Value	Cost
Nov. 11th	10 Missouri Pacific bonds	$10,000	11,396.25
	10 Gen. Reading R. R. "	10,000	8,703.75
	10 Wabash 2nds "	10,000	10,357.50
	10 Peoria & East. "	10,000	9,012.50
	15 Ches. & Ohio 4½ "	15,000	14,981.25
	5 Hocking Valley "	5,000	4,987.50
	Note of C. W. Colehour	11,660	11,000.00
		$71,660	$70,438.75

Defendants attorney, W. W. Mackall of Savannah, Ga., turned over to the receiver of the Court for that District from assets not tied up by the suit previous to the agreement of November 6, 1901—

1901		Par Value	Cost
Dec. 7th	5 shares Cotton Mill stock	$ 500.00	$ 532.50
	25 " Seaboard Co. "	2,500.00	(Estimated) 2,500.00
	1 " Greenwich Park Assn.	100.00	100.00
1902			
Feb. 15	Proceeds of Hunting Island investment—	$ 6,500.00	$ 5,760.66
	" of Thomas Martin note and interest	8,284.03	6,000.00
		$17,884.03	$14,893.16

Thus making in all brought into Court by assent of the defendants, not already tied up prior to the agreement of November 6, 1901:

	Par Value	Cost
Assets	$89,544.03	$85,331.91

There was also turned over to the receivers by or through W. W. Mackall, attorney for O. M. Carter, certificates for the following stocks which stocks were previous to the agreement of November 6, 1901, tied up by injunction against the companies issuing same:—

1901		Par Value	Cost
Dec. 7	25 shares Savannah Brewing Company stock	$2,500.00	$ 2,188.50
	150 " Towboat Company stock	15,000.00	12,275.00
	15 " Savannah Lighterage "	1,500.00	1,450.00
		$19,000.00	$15,913.50

There was also subsequently paid over to the receivers by defendants other than O. M. Carter, L. D. Carter, and I. S. Carter, certain collections from assets tied up by injunction prior to the agreement in the suits instituted by the complainant, to wit:—

From Bierne Gordon loan secured by Life Insurance Policy, tied up July 31, 1901 by injunction in New York against Ins. Co. (Notes of Bierne Gordon turned over by Mackall to receiver Dec. 7, 1901)

		Cost
1902		
Feb. 5	Collection by Receiver in Georgia	$4,884.33
1903		
Mar. 31	" " " " New York	5,437.63
		$10,321.96 $10,000.00

That as a result of the extended judicial proceedings, resisted by the defendants before Special Master Booth and before the Court as hereinbefore set forth, the defendants turned into hands of the receivers additional assets theretofore withheld, as follows:

		Par Value	Cost or Proceeds
	(After findings of Special Master Booth)		
1903			
Mch. 13	10 Kentucky Central bonds	$10,000.00	$9,944.93
1904	(After interlocutory decree of this court of Jan. 7, 1904)		
Jan. 8	1 Ky. Central bond	1,000.00	997.56
	1 Mich. Tel. bond (certf.)	1,000.00	1,019.45
" 13	11Ky. Central bonds	11,000.00	10,939.42
" 15	Proceeds coupons on Mich. Tel. bond and Ky. Central bonds collected by I. S. and L. D. Carter after Nov. 1, 1901 withheld by them	1,825.00	1,825.00
		$24,825.00	$24,726.36

Thus making of the said assets of every character brought into the hands of the receivers from all sources after the agreement of November 6, 1901, in the aggregate,

Par Value	Cost or Proceeds
$142,890.99	$135,971.77

(7)

And for further answer to said petition, this respondent says that even if the Court shall hold that there had been such compliance on the part of said defendants with the requirements of the agreement of November 6, 1901, as entitles them and their chief counsel to be paid out of the funds in the hands of the Court in this cause, as a consideration for turning over to the receivers the $190,425.00 of assets or what remained of it in their control not already in the hands of the receivers or tied up by injunction in other hands as aforesaid, that whether the allowance of fees is considered in connection with the $85,331.91 cost value of assets actually turned over to the receivers, in pursuance of the agreement without contest, or in connection with the additional $24,726.36 cost value of assets forced from the defendants after said extended judicial proceeds, or in connection also with the additional assets aggregating less than some $25,913.50 at cost as aforesaid tied up in the hands of other defendants prior to the agreement, and received in kind or proceeds afterwards, that the claim of said Chief Counsel for defendants for $100,000.00 attorneys fees for himself is exorbitant, extravagant and as respondent is advised, unconscionable, and the surrounding circumstances show could never have been in contemplation of the parties at the time of the agreement. That said agreement expressly provides that said allowances were to be "from said fund to be accounted for to the receiver."

(8)

And for further response to said petition, this respondent says that the basis on which the said petitioner has estimated what ought to be his compensation viz. 2,000 working days, covering every working day from October 5, 1901 to final decree, at $50 per day, is not only unfair because the rate per day for such alleged continuous service is exorbitant, and the time alleged to have been devoted to the work, was not required for its proper performance, but that the very clause of the agreement itself which is invoked by the petitioner provides that the elements of merit in the fixing of such fees by the Court, should not be "the length to which such proceedings may be protracted."

Respondent says that at the time of the making of said agreement of November 6, 1901, the said Oberlin M. Carter

was serving a term in the penitentiary (which was not completed until about the last of November, 1903). That it was well known to all parties to the agreement that the special counsel of the United States in charge of these civil suits, had also in charge proceedings (then pending in the Supreme Court of the United States) for removal from New York to Georgia of Benjamin D. Greene, John F. Gaynor and others, charged in indictment with conspiracy with said Oberlin M. Carter in the contract work out of which these civil suits grew, and also that said attorney for the complainant would have charge of the said criminal prosecutions in Georgia should said removal proceedings be successful, and that Carter himself as stated in clause (b) of said paragraph (8) of said agreement might be tried on the said indictment in Georgia. That the provision in clause (a) of paragraph (8) of said agreement providing that the length of time to which the proceedings might be protracted was not to be considered as the element of merit was placed therein among other things, because it was expected that there might be and probably would be extended interruptions in the pressing of said civil proceedings, both by reason of said Carter's confinement in the penitentiary and of the necessity of conducting the other proceedings on the part of the Government heretofore referred to, and the fact that the same large amount of documentary evidence required in the civil causes, had to be used in the said criminal prosecutions.

Respondent says that the following is an epitome from the records of the days on which proceedings were had before the court and in taking testimony, etc., before the masters, examiners and commissioners in said cause, on which appearances were made by said H. G. Stone.

1901 October 22; return day for rule for permanent receiver, also of rule for contempt.

" 28; order by consent continuing receivership pendente lite subject to notice for dissolution.

" " 28; there was a hearing before this Court on motion of complainant for a master to take off the accounts of F. P. Blair in certain banks in Chicago, for use on hearing of rule for contempt pending against I. S. and L. D. Carter for failure to turn over assets.

Respondent says that the answers of said defendants to said civil suits were filed February 1, 1902. Replication was filed March 1, 1902. That in February, 1902, the said Benjamin D. Greene and John F. Gaynor having been put to plead to said indictment in Georgia, the said Special Attorney of the United States in said civil suits, being also in charge of said prosecutions, about the latter part of said month forfeited their bonds and fled to Canada.

That said Special Attorney of the United States was sent by the Attorney General of the United States to Canada to effect the extradition of said fugitives, and was engaged in that special work almost continuously until about September, 1902, by reason of which orders were passed by agreement of parties extending the time for taking testimony.

That on October 15, 1902 on motion of Complainant's solicitor an order was granted referring to Booth, special master, the questions raised by the complainant as to the failure of I. S. and L. D. Carter to account for the assets which they were required to turn over to the receiver under the orders of the Court and the agreement of November 6, 1901, and the hearings were had and testimony was taken before Special Master Booth October 21, 23, 24, 25, December 2 and 9, 1902, when the taking of evidence before said Master was closed. On Dec. 20, 1902 a stipulation of record was entered into between the parties for the use in the civil proceedings of the testimony taken in the O. M. Carter court martial proceedings and the testimony taken before Board of Officers which investigated Carter, and the testimony before Commissioner Shields in the removal proceedings instituted against Greene & Gaynor in New York with certain limitations and restrictions.

By this agreement both parties were relieved from the trouble, difficulties and expense of taking the bulk of the evidence upon which the main issues in the civil suits depended.

On February 25, 26, 27, 28 and March 2, 1903, testimony was taken under notice before Commissioner W. R. Hewlett at Savannah, Ga., on the part of the complainant and Carter was represented at said hearing by said chief counsel H. G. Stone.

On April 15, 1893 Special Master Booth filed his report, and both sides filed exceptions to it.

On September 15, 17 and 18, 1903, hearing and testimony on the part of the complainant before C. A. Parsons, Special

Examiner in the city of New York, at which the defense was represented by said H. G. Stone.

On Jan. 7, 1904 hearing and interlocutory decree by this court on exceptions to Report of Booth, Special Master.

On Jan. 22, Feb. 4, 5, 15 and 16, 1904 hearing and testimony taken before Wyman, Examiner at Chicago, on the part of complainant in which the defense was represented by said H. G. Stone. Testimony on direct on part of complainant closed.

On Oct. 7, 1904 hearing and testimony taken on part of defense before C. A. Parsons, Special Examiner in New York City in which defense was represented by said H. G. Stone.

On Oct. 27 and 28, 1904 hearing and testimony taken under notice on part of defense before W. R. Hewlett, Commissioner, at Savannah, Ga., at which defense was represented by said H. G. Stone.

On Jan. 9, 10, 11, 16, 17, 18, 19, 20, 26, 27, 30, Feb. 10, and 13, 1905, hearing and testimony taken before Wyman. Examiner at Chicago, on part of defendant at which defense was represenetd by H. G. Stone.

On Feb. 13, 1905, there was a hearing had before this court on petition of H. G. Stone for payment of his expenses and allowance of attorney's fees, and on petition of O. M. Carter for payment of his expenses, and order of court thereon.

During the period from Feb. 14, 1905 to Sept. 18, 1905, complainant's Special Counsel in charge of the said civil suits was absent, conducting in Canada the extraditional proceedings against Greene & Gaynor, which had been resumed following the decision of the British Privy Council therein. The taking of testimony in the civil proceedings was entirely suspended during that seven months.

On Sept. 18, 21, 25, 26, 27, 28, 29; Oct. 2, 3, 4, 5, 6, 11, 12, 13, 16, 17, 18, 19, 20, 23, 25, 26, 27, 28, 30, 31; Nov. 1, 2, 3, 6, 7, 8, 21, 24, 25, 27, 28, 29, 30; Dec. 1, 2, 4, 5, 6, 7, 8, 9, 11, 1905, hearings and testimony taken on part of defense before Wyman. Examiner at Chicago, defense represented by said H. G. Stone and defense closed.

On Dec. 29 and 30, 1905, hearing and testimony in rebuttal for complainant before Examiner Wyman at New York City, defense represented by said H. G. Stone, testimony was closed for both sides.

From Dec. 30, 1905 to June 12, 1906, complainant's Special Counsel in charge of the civil suits was absent engaged in

the prosecution of the indictments against Greene & Gaynor in the Southern District of Georgia. During that period under order of this court Dec. 8, 1905, most of the original documents introduced in evidence in the civil suits, were withdrawn temporarily from the files in Chicago for use in the said criminal prosecutions, and proceedings in said civil suits were suspended.

On June 12, 13, 14, 15, 16, 18, 1906 the correcting of clerical errors in the testimony taken by Examiner Wyman, was taken up before the Examiner at Chicago, and completed; the defense was represented by said H. G. Stone.

On Sept. 18, 19, 20, 21, 26, 27, 28, Oct. 1 and 2, 1906, arguments were heard before the U. S. Circuit Court at Chicago on the merits of the cause and the cause submitted.

From Oct. 2, 1906 to Jan. 9, 1908, the cause was held in deliberation by the presiding judge, and other than the passing of a few orders for payment of fees, nothing was done in Court except that in May, 1907, the judge called for the submission by counsel of requests for findings which were submitted by counsel for both parties ex parte prior to June 11, 1907.

During the period from Oct. 2, 1906 to the latter part of May, 1907, complainant's special counsel was engaged in other litigation for the Government, principally on the appeal, preparation of briefs, hearings and arguments before the Circuit Court of Appeals in the Greene & Gaynor litigations, and from June 11. 1907 to Jan. 9. 1908 complainant's counsel was also engaged in other litigations for the Government. Other than the preparation of requests as aforesaid, which were submitted without argument, there was nothing for defendant's counsel to do in the procedure of said cause from Oct. 2. 1906 to Jan. 9, 1908.

On Jan. 9, 1908 the court handed down its interlocutory decree on the merits, and postponed the taking up of the settlement of the decree for thirty days.

On Feb. 10, 14, 21, 24, 1908, hearings were had before the court at Chicago on settlement of decree. Arguments were heard and briefs and supplemental briefs submitted. The defense was represented by H. G. Stone.

On March 17, 1908, the court handed down its interlocutory opinion for settlement of decree.

On March 19 and 20, 1908, further hearings were had be-

fore the court on the settlement of decree, at which the defense was represented by said H. G. Stone.

On March 21, 1908 the decree having been drafted and its form agreed on to conform to the opinions of and views expressed by the court, the same was signed by the court.

And this respondent says that the foregoing statement of the time spent before the Masters and Examiners and Commissioners in hearing to take testimony, includes all days in which the counsel for defense appeared for taking testimony whether testimony was taken or not, and includes all days in which hearings were had before the court for interlocutory or final decrees, as the same appears on the records of the court, and as respondent is advised and believes. The above does not include the days on which were entered consent or ex parte orders without hearings.

Recapitulation by Years.

		Days.
1901	Hearings before court on interlocutory proceedings	2
1902	" " " " " "	1
1902	Before Booth, Special Master, Chicago,	6
1903	" " " " "	1
1903	" Hewlett, Commissioner, Savannah	5
1903	" Parsons, Examiner, New York,	3
1904	Hearing before court on interlocutory proceedings	1
1904	Before Hewlett, Commissioner, Savannah	2
1904	" Parsons, Examiner, New York,	1
1904	" Wyman, Examiner, Chicago,	5
1905	Hearing before court on interlocutory proceedings	1
1905	Before Wyman, Examiner, Chicago,	62
1905	" " " New York	2
1906	" " " Chicago	6
1906	Hearing before the court on merits	9
1908	" " " " " settlement of decree	9
		116

(9)

Respondent further says that it appears by the expense bills filed by said H. G. Stone that he was absent from Chicago on business connected with said civil suits, as follows:

			Days (Estimated)
1901	Sept.	27, trip to Ft. Leavenworth and return	3
	Nov.	4, "	3
	"	26, "	3
1902	Jan.	23, "	3
	Apr.	3, "	3
	Sept.	30, "	3
	Oct.	28 to Nov. 12, trip to Washington, New York and return	16
	Dec.	15, trip to Ft Leavenworth and return	3
1903,	Mch.	5, trip to Savannah and return, testimony taken before Howlett as above Feb. 25 to Mch. 2.	9
	Sept.	5, trip to Ft Leavenworth and return	3
	"	21, trip to Quebec, New York and return (Testimony taken before Parsons, New York, Sept. 17, 18)	12
	Nov.	9, trip to Ft Leavenworth	3
1904	Mch.	21, trip to Cleveland and return	3
	Apr.	26, trip to Quebec and return	6
	Oct.	10, trip Sep. 18 to Oct. 9, New York and return, (Testimony taken before Parsons, Oct. 7, 1904)	23
	Oct.	18 to 30, 1904, trip to Savannah and return testimony taken before Howlett as above Oct. 27 and 28, 1904	13
1906	Jan.	1, trip to New York and return, Testimony taken by Complainant Dec. 29, 30,	5
		Total	114

Of which 13 days were included in the above hearings had in New York and Savannah.

The said time of absence of said H. G. Stone from Chicago being estimated by respondent from the data stated in said expense bills of said H. G. Stone being in all 114 days, Respondent says that during the time, about six and one-half years, during which said suit has been pending, and for

which the said defendants' chief counsel claims that all the working days, 2,000, were devoted to work in said cause, that only about 114 days were spent away from his place of business at Chicago. That during a very large part of the balance of the time, the proceedings in the cause were suspended as hereinbefore stated, so that nothing active could be done in the cause.

(10)

Respondent admits that said chief counsel for the defendant O. M. Carter, by agreement admitted in evidence numerous accounts from bankers' and brokers' books, (known by both parties to be correct), verified by affidavit, reserving other objections, and that the same was done on part of complainant, and respondent admits that the said H. G. Stone did everything that could be reasonably expected, to facilitate proceedings in the cause, with the exception of turning over all the assets, and the resistance offered resulting in the reference and proceedings before Special Master Booth, and the long delays incident thereto.

That the said O. M. Carter and H. G. Stone, were fully cognizant of the testimony taken before the Board of Officers, the Court Martial and the Removal proceedings before Commissioner Shields, before they entered into the agreement of Dec. 20, 1902, by which that testimony was to be used in said civil causes. That said agreement was entered into for the convenience of both parties to the cause, and by it the trouble and expense was saved to both parties of taking the same testimony again, and at the same time it left comparatively but a small amount of testimony, principally that of said O. M. Carter and the expert accountants which thereafter was taken, other than that taken on the Booth reference.

Respondent says that other than the testimony taken before Booth, Master, as aforesaid, and a small amount of testimony, five days in February and March, 1903, before Hewlett, as aforesaid, and four days in September, 1903, before Parsons as aforesaid, that the taking of testimony by complainant on the merits for reasons hereinbefore stated was not commenced until Jan. 22, 1904, and testimony on the direct for complaint was closed Feb. 16, 1904. And the defendant did not commence to take its testimony until Oct. 7, 1904. The period from Feb. 16, 1904, to October, 1904, the defense took to get ready for putting in their testimony on the merits, and

Mr. Johnson was left in charge at Chicago of the Government's original documentary evidence in the case, subject to inspection of said Carter and his attorney. A small amount of testimony was taken on part of defense on one day in New York and on Oct. 27, 28, 1904 in Savannah, but the defense did not commence actively to take testimony on the merits until Jan. 9, 1905, which was interrupted by complainant's solicitor being called away to Canada as aforesaid, and the taking of testimony on part of defense was not resumed until Sept. 18, 1905 as aforesaid, and was closed Dec. 11, 1905, and rebuttal testimony on part of complainant was closed Dec. 30, 1905, when the proceedings were again interrupted by the absence of complainant's counsel in Savannah trials as aforesaid. And respondent says that while the major part of these delays are in no way to be charged to the defendants or their counsel, that the time consumed by such delays occasioned either by the defense or the Government was by no means necessary to the conduct of said civil suits, or to be reckoned as time devoted to the said suits.

That besides having the management and practically the exclusive control of the conduct of the said civil suits against the said defendants, that the said Special Counsel for the United States, conducted the Removal proceedings against Greene & Gaynor in New York to its close in January, 1902, had control and management for the Government of the extradition proceedings instituted in Canada against Greene & Gaynor, requiring his personal presence there the greater part of the years 1902 and 1905, and brought to a successful end the criminal prosecutions against the same defendants in Georgia, requiring his constant attention during the first six months of 1906, and also had exclusive management for the Government of said criminal case in the U. S. Circuit Court of Appeals, which covered evidence almost as voluminous as that in the civil suits, and requiring briefs even more extensive, and also had charge for the Government of the certiorari proceedings before the Supreme Court of the United States; all of which proceedings were conducted and brought to a successful conclusion by said Solicitor for complainant during parts of the same period that he was in charge of and was conducting for the Government the said civil suits against O. M. Carter, the defense of which it is claimed in said petition took practically all the time of said chief counsel for the defense.

During the same period said special counsel for the Govern-

ment also instituted and has been conducting other suits in other districts against Benjamin D. Greene and John F. Gaynor which have not yet been brought to a conclusion similar in character to these suits against said O. M. Carter.

Respondent says that it does not deny that the said chief counsel for the said defendant has devoted a great deal of time very properly to said defense, but respondent is informed and believes that said counsel for defendant was not without a private practice, and that he has continued to conduct such practice during all of said period from Nov. 6, 1901 to the present time, and respondent says that the comparatively short time that the proceedings in this cause took him away from Chicago, his place of business, and the comparatively short time consumed in the actual taking of testimony, and in the proceedings in Court, compared with the much greater time when no proceedings were actively going on or when the work to be done was merely office work, as shown by the record of this cause, would not have seriously interfered with the regular practice of any good practitioner.

(11)

Respondent says that said petition tends to leave a wrong impression of the voluminousness of the record. That the statement of the court in its opinion that the record consisted of some 50,000 pages, was based upon the statement of Mr. Sears, of counsel for Carter in his argument, and was not intended as a finding of fact; the testimony in the record as shown by the record itself being as follows:

Testimony not taken but admitted by agreement.

	Typewritten pages
Before Board of Officers	1051
(Also there were certain exhibits thereto consisting of maps, compilations, proposals and contracts, etc., which were referred to therein, most of which were exhibits in the Court Martial and subsequent record.)	
Before the Court Martial	4626
(Most of the documentary exhibits were copied in the type-written record, but there were a number of Exhibits consisting of disbursing checks, contracts and proposals, maps and compilations and photographs, which were not copied, but referred to in the record, most of which were introduced again in the subsequent records.)	

Before Shields, Commissioner, Removal Proceedings (Volume of contracts and proposals, also 2 volumes of accounts from books of bankers, brokers, etc., compilations, drawings of mattresses, etc., referred to in the testimony)	4555
	10232
Testimony taken in present cause:	
Before W. M. Booth, Master (Also exhibits of accounts, checks, etc.)	275
Before C. A. Parsons, Examiner (Also exhibits of accounts, etc.)	216
Before Howlett, Commissioner, (Also exhibits of drawings, contracts, etc.)	161
Before Wyman, Examiner, including letters and other documents copied into the record. (Also Exhibits of accounts, compilations, check stub books, deposit books, checks, bills, referred to not copied)	4852
	5504

By agreement for convenience of reference certain river and harbor proposals, contracts, etc., were printed in a volume and substituted in the record for the loose contracts, but that tended to shorten the record.

Respondent says that 25,000 type written pages would be a very liberal estimate of the pages in said record if all the exhibits not typewritten could be reduced to typewritten form of the usual size.

(12)

Respondent says that the time given by this court to complainant's solicitor for preparing complainant's brief on the merits, after the closing of testimony in this cause, and after complainant's solicitor was relieved from the conduct of the criminal prosecutions in Georgia, was from June 12, 1906, to Oct. 2, 1906, which included the time to the end of the hearing on the merits, a little less than four months, complainant having the burden of the case to make out. That defendant's solicitor having had from Jan. 1, 1906, to Sept. 18, 1906, eight and one-half months, without anything else to do in said cause, ought reasonably to have been able to prepare said brief without serious interference with his office practice.

(13)

Respondent further says that there were in said cause no new or intricate issues of law involved, the main law points raised being a few questions on the admissibility and effect of evidence, and the application to the facts of the case of the well established rules of law as to tracing trust funds.

That the case was one almost entirely upon the weight, effect and bearing of the evidence, which by reason of the fact that the charges of fraud in the engineering work extended over several years, and under several contracts, and by reason of the fact that in the suits the complainant undertook to trace the investments of the profits of the contracts through its successive changes for a period of ten years, made the record very voluminous, as hereinbefore stated.

Respondent admits that in the handling of the evidence for the defense, and in the preparation of briefs of the evidence, it took great care, skill and labor on the part of the defendant's solicitor (as it did on the part of complainant's solicitor) to properly perform his duty to his client, but respondent says, that the record discloses the fact that it was practically impossible for defendants' counsel to have been devoting but a comparatively small part of the time claimed in said petition to work in this cause, and that in any event but a small part of the time actually claimed in said petition, was reasonably necessary to be devoted by any competent attorney, to work in said cause.

Respondent further says, that it admits that said cause was one of importance, involving as it did the right of the complainant to subject to its claims, some $400,000.00 of assets tied up in the hands of the agents of said O. M. Carter, on the ground that said assets were a trust fund, arising from illegal profits of river and harbor contracts, under the supervision of said O. M. Carter, but respondent says that the express consideration for the (7) and (8) clauses of the said agreement of Nov. 6, 1901, by which defendants' attorneys' fees, etc., were to be paid out of the fund, was the delivery forthwith into the hands of the receivers, (to be fought for) of the assets claimed by the Government to have gone into the hands of I. S. and L. D. Carter which had not been already tied up, some $190,425.00 or so much thereof as had not been already disposed of so as to be beyond their control, and that the allowance of attorney's fees under any circumstances must be reasonably proportioned to the amount of assets turned into

court in consideration of the allowance to be made. The agreement itself providing that it was from the fund "to be accounted for to the receiver" that the allowance was to be made. And respondent admits that the amount so turned over subsequent to the agreement of Nov. 6, 1901, by the defendants to the receivers of any of the districts is to be considered as if turned over to the receiver in this district.

But respondent says, that the payment out of said fund so surrendered to the receiver, of $5,000 for local counsel in other districts, $6,000 to local counsel at Chicago, $7,800 on O. M. Carter's personal expenses, besides costs of testimony, printing, etc., and $100,000.00 claimed by his chief counsel would be disproportionate to even the $135,971.77 of assets turned over to the receiver, subsequent to the agreement and certainly no intention that the court should make such unreasonable allowances out of the fund can be inferred to have been contemplated by the parties when the agreement was made.

(14)

Respondent in further response to said petition of said chief counsel for defendant, O. M. Carter, says that should the court hold, that there has been such compliance on the part of the defendants with the terms of the agreement of Nov. 6, 1901, as entitles the said defendants and their counsel to invoke the provisions of paragraphs (7) and (8) of said agreement, and if the court shall fix what is a reasonable amount of fees to be paid out of the fund accounted for to the receivers under the agreement of Nov. 6, 1901, to said chief counsel of said O. M. Carter and his local attorney at Chicago, that nevertheless, this defendant says, that the said amounts which may be awarded, would be a charge first upon any and all the assets in the hands of the receivers which have been or may be decreed to be the property of O. M. Carter, and that until such part of the assets are exhausted in the payment of the expenses, attorneys' fees, etc., provided for in paragraphs (7) and (8) of the agreement, none of the assets held to be the property of the Complainant should in any event be applied thereto.

(15)

And respondent says that at sundry times since the agreement of Nov. 6, 1901, this court has advanced from the fund in court to said O. M. Carter for personal expenses, and for

bills of printers, and to his chief counsel, allowances, by orders in which the court reserved until its final decree the adjustment of the same between the parties, to-wit:

To O. M. Carter, per reports of receiver		$7,800.00
For printing bills of O. M. Carter (order of Sept. 5, 1905)		
To Gunthorpe-Warren Printing Company	$977.60	
" (order June 18, 1906)	$1,540.00	$2,517.60
To H. G. Stone, account of expenses (order Apr. 27, 1904)		$1,089.94
" Allowance on fees (order Feb. 15, 1904)	6,000.00	
" " " (order Feb. 13, 1905)	5,000.00	
" " " (order Dec. 11, 1905)	2,500.00	
" " " (order, Jan. 14, 1907)	2,500.00	
" " " (order Aug. 7, 1907)	1,500.00	$17,500.00
To Gunthorpe-Warren Printing Company (order Apr. 1908)		$1,486.90
To Charles McPherson expert accountant (order Apr. 1908)		$1,580.73

And respondent says that in the final decree adjusting the cost and allowances if any, which are to be made on the assets in the hands of the receiver, the court should provide in its decree that not only such amounts as the court may award under paragraphs (7) and (8) of said agreement but all of the above items already paid out to said Oberlin M. Carter shall be satisfied first out of the assets in the hands of the receiver belonging to O. M. Carter and next out of the said assets in the hands of the receivers belonging to the Government if the court holds that the defendants have sufficiently complied with the agreement of Nov. 6, 1901, as to making said expenditures in Carter's behalf a charge upon the entire assets.

THE UNITED STATES OF AMERICA,
By MARION ERWIN,
Special Asst. to the Atty. Gen'l.

Before the undersigned personally comes Marion Erwin, Solicitor for Complainant in the above stated cause, who, being duly sworn, deposes and says, that he has had charge personally of the conduct of said cause from its beginning to the present time and is familiar with all the details of the proceedings in said cause; that the facts stated in the foregoing

response so far as they are stated as being within his own knowledge are true, and in so far as they are stated from information derived from the record of said cause he believes the same to be true.

MARION ERWIN.

Subscribed and sworn to before me this 8th day of April, 1908.

H. H. STODDARD,
Clerk Cir. Ct. of the U. S., Northern Dist of Illinois.

Endorsement: Filed April 8, 1908. H. S. Stoddard, Clerk.

And on to-wit: the 11th day of April, 1908, came Horace G. Stone, and filed in the clerk's office of said court certain bills for disbursements with his affidavit thereto attached, in the words and figures following, to-wit:

EXPENSE BILLS OF H. G. STONE, SOLICITOR FOR O. M. CARTER.

Snmmary of Bills hereto attached.

Bill of Dec. 1, 1904, already filed	$1,289.39
Bill Dec. 1, 1904, to date	271.23
Items on bill of March 1, 1904, left until final decree	308.69
Balance allowance O. M. Carter	382.00
	$2,251.31

CASH EXPENDITURES BY H. G. STONE.

In re United States vs. O. M. Carter et al., since Dec. 1, 1904, under agreement of Nov. 6, 1901.

1904

Dec. 1	To Smith Premier Typewriter Co. for rent of machine for December	$ 5.80
" 2	" cash expended for 2 reams of paper	1.70
" 20	" cash expended for car fare and express on Nov. 10 and Dec. 15	.40
" 31	" cash expended for express	.55

1905.			
Jan.	5— "	cash paid for express	.35
		Smith Premier Typewriter Co., rent of machine for January	5.00
		Cash paid for telegrams during December, 1904	.92
"	25— "	bill of Lindabury, Depue & Faulks vs. Butler, Notman, Joline & Mynderse, for additional services and disbursements, including examination of records in office of Register of Essex County	30.00
Feb.	3— "	Marshall E. Sampsell, Copy of portion of bills of complaint	2.00
"	4— "	cash paid for cab for taking Capt. Carter home when ill, on Jan. 11, 1905	2.00
"	5— "	Smith Premier Typewriter Co., rent of machine for February	5.00
"	10— "	cash paid for carfare of messenger to Carter's house on Feb. 4th and 8th	.20
"	15— "	cash paid for telegrams during January.	.65
Mar.	5— "	Smith Premier Typewriter Co., rent of machine for March	5.00
"	6— "	cash paid for express and postage to March 1st	16.59
"	11— "	cash expended for telegrams during February	2.68
Apr.	1— "	Smith Premier Typewriter Co., rent of machine for April	5.00
"	8— "	postage during March	4.68
"	10— "	cash paid for telegrams during March	.80
May	1— "	Smith Premier Tyewriter Co., rent of machine for May	5.00
May	11— "	cash paid for telegrams during April	.99
June	1— "	Smith Premier Typewriter Co., rent of machine for June	5.00
"	19— "	cash paid for telegrams during May	2.23
July	1— "	Smith Premier Typewriter Co., rent of machine for July	5.00
Aug.	1— "	cash paid for telegrams during July	5.65
	"	Smith Premier Typewriter Co., rent of machine for August	5.00
Sept.	1— "	cash paid for telegrams during August	.74
		Smith Premier Typewriter Co., rent of machine for Sept	5.00

"	22— "	cash paid for certificate of magistracy..	.25
Oct.	1— "	Smith Premier Typewriter Co., rent of machine for October	5.00
"	7— "	Savannah Morning News, subscription from Sept. 29 to Dec. 29.....	2.00
Oct.	10— "	telegrams during September.....	2.91
Nov.	1— "	Smith Premier Typewriter Co., rent of machine for November	5.00
"	4— "	Savannah Press subscription Nov. 29 to Mar. 29, 1906	2.50
"	8— "	telegrams during October	3.15
"	27— "	express	.45
"	14— "	telegrams during November.....	2.82
"	22— "	telegram	1.80
1906.			
Jan.	1— "	expenses of H. G. Stone to New York and return taking testimony Dec. 29 and 30	91.00
"	9— "	telephone during December	.30
"	10— "	telegrams during December	4.80
"	23— "	Savannah Morning News, subscription for 3 months from Dec. 20, 1905.....	2.00
"	21— "	telegrams during January	1.09
	"	long distance telephone toll.....	1.50
"	17— "	express	.45
Mar.	1— "	telegrams during February	.25
"	12— "	Savannah Morning News, subscription March 20 to April 20.....	.70
Apr.	13— "	fee of U. S. Marshal for serving notice on Mr. Erwin at Savannah.....	2.00
	"	express paid during March	.35
"	26— "	cash paid for telegrams	2.27
May	12— "	paid A. H. Van Brunt, expense New York suit	6.71
1908.			
Jan.	16— "	paid clerk copy of Opinion.....	9.00
		Total	$271.23

ITEMS ON BILL OF H. G. STONE

of March 1, 1904, left over until final decree.

1901		
Nov. 30—Expenses to Washington and return in habeas corpus case		$ 77.00
1902		
Mar. 11—Subscription to Savannah Press		1.28
Apr. 4—Subscription to Savannah News		2.13
Apr. 10—Sent to prison authorities at Ft. Leavenworth to pay for nurses etc. for Capt. Carter		100.00
May 26—Subscription to Savannah News		2.03
June 24—Subscription to Savannah Press		1.25
1903		
Jan. 2—Sent Carter at Ft. Leavenworth to buy stationery to be used in this case		25.00
June 27—Sent Carter at Ft. Leavenworth for expenses working on the case		100.00
		$308.69

ALLOWANCE OF O. M. CARTER.

Paid Carter by H. G. Stone, to Sept. 1, 1904, as follows:		
Cash		$1,970.00
Express charges on Carter's clothing from New York		23.55
Paid Carter cash from Sept. 1, 1904, to Jan. 30, 1905		770.00
		$2,763.55
Less items paid by Carter and charged on bill of H. G. Stone		281.55
		$2,482.00

Credit.

1904		
Oct. 18—Cash from Receiver	$1,000.00	
1905		
Feb. 7— " " "	$1,100.00	2,100.00
Balance due H. G. Stone		$382.00

Chicago, December 1st, 1904.

PART OF CASH EXPENDITURES BY H. G. STONE IN RE UNITED STATES VS. OBERLIN M. CARTER ET AL., UNDER AGREEMENT BETWEEN SAID PARTIES DATED NOVEMBER 6TH, 1901.

1904			
Feb.	4	Cash paid Smith Premier Typewriter Company for rent of machine for February for use of Capt. O. M. Carter in re preparation of case	$ 5.00
	5	Cash paid American Writing Machine Company for rent of typewriter from January 16th to February 16th, 1904	$ 3.50
	27	Cash paid V. E. Raible for stenographic work, 22 days @ $3.00 per day	$ 66.00
		Cash paid M. Schroeder, Clerk, 12 days @ $1.00 per day	$ 12.00
Mch.	7	Cash paid Smith Premier Typewriter Company for rent of typewriter for month of March, 1904	$ 5.00
	15	Cash expended for car fare of messenger to Capt. Carter's house on Mch. 4, 11, & 14	$ .30
	21	Cash paid for stationery	$ 1.50
		Expenses of H. G. Stone to Cleveland and return	$ 32.30
	31	Cash paid V. E. Raible for stenographic work, 26 days @ $3.00 per day	$ 78.00
		Cash expended for typewriter supplies, etc., for December, 1903, and January and February, 1904	$ 39.80
		Cash paid M. Schroeder, Clerk, 7 days @ $1.00 per day	$ 7.00
		Cash paid for supplies for March	$ 4.45
Apl.	5	Cash paid Smith Typewriter Company rent of typewriter for April	$ 5.00
	15	Cash paid car fare messenger to Capt. Carter's house	$ .25
Apl.	22	Cash paid messenger's car fare to Captain Carter's house	$ .10
	26	Expenses of H. G. Stone to Quebec on April 21st and return	$ 82.75

	30	Cash paid V. E. Raible for stenographic work, 14 days @ $3.00 per day	$ 42.00
		Cash paid for supplies for April	$ 13.80
May	5	Paid Shea Smith & Company	
		Two Eastman Binders made to order	$ 3.62
		Six Shipman Binders	$ 4.32
		Six Reams typewriter paper	$ 3.84
		Paid M. Fry & Co.	
		One box carbon paper	$ 3.00
		Cash paid for telegrams during April	$ .30
	6	Cash paid Smith Premier Typewriting Company for rent of machine for May, 1904	$ 5.00
	25	Cash paid messenger's car fare to Captain Carter's house	$ .10
	28	Cash paid W. J. Jenkins for photographs of letters	$ 10.00
June	14	Cash paid for express	$ .80
July	1	Cash paid Shea Smith & Co. for Emerson Binders, covers, etc.	$ 4.11
	5	Cash paid Smith Premier Typewriting Company for rent of machine for June and July	$ 10.00
Aug.	15	Cash paid Mrs. E. E. Clinton for stenographic work, 6 days, @ $3.00 per day	$ 18.00
	27	Cash paid for telegrams during July	$ 2.43
	29	Cash paid Smith Premier Typewriting Company for rent of machine for August, 1904	$ 5.00
	30	Cash paid for blank book	$ .80
Sep.	2	Cash paid Mrs. E. E. Clinton for stenographic work Aug. 15th to 26th, 10½ days @ $3.00 per day	$ 31.50
	3	Cash paid Helen M. Schaefer for stenographic work Aug. 17th to Sept. 3rd, 16 days @ $3.00 per day	$ 48.00
Sep.	17	Cash paid Helen H. Schaefer for stenographic work from Sept. 5th to Sept. 17th, 1904, @ $3.00 per day	$ 36.00
	24	Cash paid American Express Co. express on papers to New York	$ 2.38
	26	Cash paid express on papers to New York	$ .35

Oct.	1	Cash paid for express	$ .85
	10	Expenses of H. G. Stone to New York on September 18th, returning October 9th, 1904	$ 292.51
		Cash paid for telegrams during September	$ 1.97
		Cash paid American Express Co. express on papers from New York	$ 3.15
		Cash paid expenses of witnesses in New York	$ 24.00
	11	Cash paid Helen H. Schaefer for stenographic services from Sept. 19th to October 10th, 1904	$ 57.00
		Cash paid F. S. Webster Co. for two reams of paper	$ 1.76
	16	Cash paid rent of Safety Deposit Vault box	$ 3.00
	17	Cash paid American Express Company express on papers to Savannah	$ 6.95
		Cash paid American Express Company for express	$ 1.00
	19	Cash paid for tin box to keep papers in	$ .80
	31	Expenses of H. G. Stone to Savannah and return, October 18th to October 30th	$ 192.60
	9	Cash paid Smith Premier Typewriting Company for rent of machine for September, October and November	$ 15.00
	14	Cash paid Gunthorp-Warren Printing Company for binding two volumes in re Carter case	$ 2.50
Nov.	29	Cash paid Helen H. Schaefer copying 350 pages, 5 carbon copies, @ 28c per page	$ 98.00
		Total	$1,289.39

In the Circuit Court of the United States, For the Northern District of Illinois, Eastern Division.

United States
vs.
Oberlin M. Carter, *et al.* } Gen. No. 25980.

State of Illinois, }
Cook County. } ss.

Horace G. Stone, being first duly sworn on oath deposes and says, that he actually paid out the foregoing sums of money amounting to $2,251.31 as stated in said foregoing bills. That he did so in the bona fide opinion that the same were all authorized by the contract of November 6, 1901. That no part thereof has been repaid to him, and there is justly due to him said sum of $2,251.31.

HORACE G STONE

Subscribed and sworn to before me this 11th day of April, A. D. 1908.

MARY L DOWNES
(Seal) *Notary Public.*

Endorsement Filed April 11, 1908 H. S. Stoddard Clerk

And on towit: the 8th day of April 1908 came the United States by Marion Erwin its solicitor and filed in the clerk's office, objections to the payment of expense bills of H. G. Stone, in the words and figures following towit:—

OBJECTIONS OF UNITED STATES TO ALLOWANCE OF BILLS OF H. G. STONE FOR EXPENSES &C.

In the Circuit Court of the United States, For the Northern District of Illinois, Eastern Division.

United States
vs.
O. M. Carter *et al.* } In Equity No. 25980.

And now comes the United States by Marion Erwin, Special Assistant to the Attorney General, and for objection to the payment of the bills of H. G. Stone for his expenses claimed as chief counsel for said defendant, O. M. Carter, to wit:—

"Bill of Dec. 1, 1904, already filed	$1,289.39
Bill of Dec. 1, 1904, to date	271.23
Items on bill of March 1, 1904 left until final decree	308.69
Balance allowance O. M. Carter	282.00
	$2,251.31"

says:—

(1)

Respondent denies that there has been such compliance on the part of said defendants I. Stanton Carter, L. D. Carter and Oberlin M. Carter with the terms of said agreement of November 6, 1901, as entitles them and their counsel to invoke the (7) and (8) paragraphs thereof.

And for specifications of the details in which the said defendants have failed to comply with the terms of said agreement respondent refers to its response of file in the record to the petition of H. G. Stone, chief counsel for defendants for final compensation for services as such chief counsel, which response is made a part of these objections, as if incorporated therein.

Respondent says that by its interlocutory decree of January 7, 1904 this court held that there had been sufficient compliance on the part of said defendants with the terms of the agreement of Nov. 6, 1901 as to put in operation paragraphs (7) and (8) of said agreement for interlocutory purposes, reserving decision of the question as to whether there had been complete compliance for the final decree of the court on the merits.

That the said H. G. Stone presented his petition to the court for the allowance of certain alleged expenses during 1901, 1903 to Feb. 17, 1904, aggregating $1,461.91

That the complainant filed objections to said bill of expenses, on the ground among other things that there were items of expenditure on said bill aggregating $374.74 which were wholly without the purview of said agreement.

Thereafter the said H. G. Stone rendered a second account for $1,089.94 covering the same items as were in the above bill, omitting items objected to, which by order of May 2, 1904, were paid from the fund in court $1,089.94

Leaving the balance objected to for determination on final decree.— $ 371.97

And respondent now renews and urges the same objections.

(2)

That thereafter said H. G. Stone rendered a third expense bill covering expenditures alleged to be within the purview of the agreement of Nov. 6, 1901, covering items from Feb. 4, 1904 to Nov. 29, 1904 and petitioned for payment of same $1,289.39

To the allowance of said bill and petition the complainant filed objections, on the grounds among other things that said expense accounts were not sufficiently proved, and that certain items thereof were not chargeable under the agreement. On Feb. 13, 1905 the court made an order making an allowance to said H. G. Stone for fees, and reserving the passing upon said expense account until final decree.

(3)

That said H. G. Stone has since presented an expense bill covering the period from Dec. 1, 1904 to Jan. 16, 1908 for payment $ 271.23

Respondent objects to the items on this bill on the grounds among other things that the items thereof are not sufficiently proved, and seem to be exorbitant, for instance items for rent of typewriter aggregating for twelve months $60.80, whereas typewriting machines usually rent for $3. per month. Such machines usually can be purchased for $100. Besides, most of the items do not appear on the face of the account to be within the purview of the agreement of Nov. 6, 1901. Among other things there are items for subscriptions to newspapers. Respondent says that the intent of said agreement was that the said fund to be brought into court should be charged only with the traveling and other personal expenses of said H. G. Stone, as counsel, and not his office expenses, and not other expenditures he might make even though they were made in the conduct of the case, such expenses for the conduct of the case as were to be chargeable to the fund having been specifically provided for by other clauses of the agreement.

(4)

Respondent says that the claim of said attorney for $282.00 alleged to have been paid by him to O. M. Carter is not a charge within the purview of the agreement. Moreover there is no proof of anything in reference thereto which would show that said disbursment was an expense of said Stone within the purview of said agreement.

(5)

Respondent says that clause (d) of paragraph (8) reads: "And if before the final determination of this cause the said Oberlin M. Carter shall be liberated from prison, he shall be allowed his reasonable personal expenses incurred by him while engaged in work in this cause, including the taking of evidence, but with no compensation for his time, such expenses to be determined by the court and paid out of the monies in court."

That said O. M. Carter did render certain accounts of alleged expenses from Nov. 28, 1903 (when he was released from prison) up to Sept. 1, 1904 and petitioned the court for payment of same. That said bill so rendered averaging a little less than $150.00 per month, included alleged expenditures, for tickets to theatres, Y. M. C. A. dues, magazines and reading matter, clothing, fitting up office, office rent, stenographers, typewriting machines and various other expenditures, aggregating some $773.90, which were not within the purview of said agreement of Nov. 6, 1901, and none of said items as presented were supported by vouchers.

That complainant filed objections to the payment of said account.

By agreement of parties the court on October 6, 1904, allowed said O. M. Carter to be paid $1,000.00 on account of the expenses claimed, reserving the passing upon the objections for future consideration. Thereafter the court by its order of Feb. 13, 1905, allowed said Carter $150.00 per month as an advance on his expenses commencing from Nov. 28, 1903, payments to be continued by the receiver at that rate, until the expense accounts of said Carter should be adjusted but the $1,000.00 already advanced to be deducted from said allowance.

That under said orders of the court the said O. M. Carter has been advanced $7,800.00.

And the said Carter has never rendered any other expense bills since those already mentioned, ending Sept. 1, 1904.

And respondent says that said claim of said H. G. Stone for $382.00 for alleged sums paid by him to said O. M. Carter is an attempt to charge upon the fund in court an additional amount for said Carter for which no expense accounts have been rendered by said Carter and in excess of the $150.00 per month allowed said Carter as advance under the order of Feb. 13, 1905.

And respondent objects to the same for that reason, and because said charge is not within the terms of the agreement, and for all the reasons hereinbefore urged.

(5)

And respondent says that in any event whatever allowances have been or which may be paid out of the fund in court to the said H. G. Stone for expenses or to said O. M. Carter, should be decreed by the court to be a charge first upon the assets in court which are held to be the property of O. M. Carter and secondarily only as a charge on the assets held to be the property of complainant.

THE UNITED STATES OF AMERICA
By MARION ERWIN
Special Asst to the Atty Genl

Before the undersigned personally comes Marion Erwin, Solicitor for Complainant in the above stated cause, who, being duly sworn, deposes and says, that he has had charge personally of the conduct of said cause from its beginning to the present time and is familiar with all the details of the proceedings in said cause; that the facts stated in the foregoing response so far as they are stated as being within his own knowledge are true, and in so far as they are stated from information derived from the record of said cause he believes the same to be true.

MARION ERWIN

Subscribed and sworn to before me this 8th day of April 1908.

H. S. STODDARD
Clerk Cir. Ct. of the U. S. Northern Dist of Illinois.

Endorsement Filed April 8, 1908 H. S. Stoddard Clerk

And on towit: the 1st day of April 1908 came Nathaniel C. Sears, and filed in the clerk's office of said Court his petition in the words and figures following towit:

PETITION OF N. C. SEARS FOR ALLOWANCE OF FEES, AND AFFIDAVITS ATTACHED.

In the Circuit Court of the United States, For the Northern District of Illinois, Eastern Division.

United States
vs.
Oberlin M. Carter *et al.* } Gen. No. 25980.

Petition of Nathaniel C. Sears for Allowance of Solicitor's Fees Under Contract of November 6th, 1901.

To the Honorable Christian C. Kohlsaat,
Circuit Judge of said Court:

Your petitioner, Nathaniel C. Sears, respectfully represents and states to your Honor, as follows: That a contract was entered into in the above entitled cause between complainant and the defendant, Oberlin M. Carter et al., by which it was agreed that there should be paid out of the money in controversy solicitors' fees of chief counsel for said Oberlin M. Carter and also fees for his attorney at Chicago,—said contract being in part as follows:

"The fees, traveling expenses and other expenses of Oberlin M. Carter's chief counsel and of his attorney at Chicago, to be fixed and allowed by the court."

Your petitioner is informed and believes that the said contract was afterwards approved by the court in the above entitled cause.

Your petitioner further states that he was engaged by said Oberlin M. Carter as his attorney at Chicago to render professional services in connection with Horace G. Stone, Esq., chief counsel of said Oberlin M. Carter in the above entitled cause; that, among other things, your petitioner was engaged to participate in the oral argument upon the trial of said cause; that in order to prepare for such argument your petitioner was obliged to familiarize himself with the record in said cause (except as to certain matters pertaining to certain funds) and that your petitioner did, in order to familiarize himself with the facts in said cause, and to be able to take part in the oral argument upon the trial of said cause, spend a large amount of time in reading and studying the record in said cause; that your petitioner was engaged in said work during a considerable portion of the months of July, August and up to the 18th day of September, A. D. 1906; that on

the 18th day of September, 1906, the trial of said cause was commenced and your petitioner attended as one of the attorneys in said cause during the days occupied by such trial and took part in the oral argument of the said cause; that after the trial of said cause your petitioner has been called upon to render further professional services in said cause in connection with the final disposition of said cause, and as attorney, during the months of September and October, 1906, and during the months of February and March, 1908, rendered professional services in that behalf; that in consideration of the litigation, the amounts and interest involved and the amount of time which petitioner has been obliged to devote to said cause, your petitioner is of the opinion that an allowance of Six thousand ($6000) Dollars, for his services would be a very reasonable allowance and would certainly not be in excess of the usual, reasonable and customary fees charged by members of the legal profession in the City of Chicago for professional services in litigation of like importance.

Wherefore your petitioner respectfully prays that he may be allowed, in accordance with the provisions of said contract, the sum of Six thousand ($6000.) Dollars for his fees in this behalf.

Respectfully submitted,

NATHANIEL C. SEARS

Dated, Chicago, March 25th, A. D. 1908.

AFFIDAVIT OF JOHN S. MILLER.

In the Circuit Court of the United States, For the Northern District of Illinois, Eastern Division.

United States
vs.
Oberlin M. Carter *et al.* } Gen. No. 25980.

State of Illinois, }
County of Cook. } ss.

John S. Miller, being first duly sworn, deposes and says that he is a practicing lawyer in the City of Chicago; that he is familiar with the reasonable and customary charges of practicing attorneys in the said city in cases of importance; that he has read a copy of the petition in the above entitled cause of Nathaniel C. Sears, dated March 25th, 1908, for the allowance of solicitors' fees; that he is acquainted

and has been for many years with said Nathaniel C. Sears; that from the facts known to affiant, and appearing in the said petition, this affiant is of the opinion that a reasonable and customary charge for the professional legal services of said Nathaniel C. Sears, as set forth in the said petition, would be not less than Six thousand ($6000.) Dollars.

JOHN S. MILLER.

Subscribed and sworn to before me this 26th day of March, A. D. 1908.

DON C. WRAY,
Notary Public.

AFFIDAVIT OF JOHN J. HERRICK.

In the Circuit Court of the United States, For the Northern District of Illinois, Eastern Division.

United States
vs.
Oberlin M. Carter *et al.* } Gen. No. 25980.

State of Illinois, }
County of Cook. } ss.

John J. Herrick, being first duly sworn deposes and says that he is a practicing lawyer in the City of Chicago; that he is familiar with the reasonable and customary charges of practicing attorneys in the said city in cases of importance; that he has read a copy of the petition in the above entitled cause of Nathaniel C. Sears, dated March 25th, 1908, for the allowance of solicitors' fees; that he is acquainted and has been for many years with said Nathaniel C. Sears; that from the facts known to affiant, and appearing in the said petition, this affiant is of the opinion that a reasonable and customary charge for the professional legal services of said Nathaniel C. Sears, as set forth in the said petition, would be not less than Six thousand ($6000.) Dollars.

JOHN J. HERRICK.

Subscribed and sworn to before me this 26th day of March, A. D. 1908.

FRANK JULIUS SMITH,
Notary Public.

Endorsement Petition of N. C. Sears with affidavits attached. Filed April 1, 1908 H S Stoddard Clerk

And on towit: the 13th day of April 1908 came N. C. Sears and attached to the foregoing petition and filed in the clerk's office of said Court, his affidavit in the words and figures following towit:—

AFFIDAVIT OF N. C. SEARS.

In the Circuit Court of the United States, For the Northern District of Illinois, Eastern Division.

United States
vs.
Oberlin M. Carter *et al.* } Gen. No. 25,980.

State of Illinois }
Cook County } ss.

Nathaniel C. Sears, being first duly sworn, deposes and says that he has rendered the professional services set forth in the foregoing petition; that he did so in pursuance of the request of Horace G. Stone, Esq. as Chief Counsel of said Oberlin M. Carter, and at the request of the said Oberlin M. Carter.

This affiant further says that, in the services rendered and time expended as indicated in said petition, this affiant did no more than he believed to be reasonably necessary in order to enable him to render the services requested by said Stone and said Carter; that the time expended in the examination of the record in this cause was necessarily expended to the end before set forth; that the court attendance was only when specifically requested by said Stone or said Carter, or both; that the fair and reasonable value of the services rendered by this affiant is not less than six thousand dollars ($6000); and that this affiant has been paid nothing on account of said services.

NATHANIEL C. SEARS.

Subscribed and sworn to before me this 11th day of April, A. D. 1908.

M. E. SHIELDS,
Notary Public, Cook County, Illinois.

Endorsement Filed April 13, 1908 H. S. Stoddard Clerk.

And on towit: the 8th day of April 1908 came the complainant by Marion Erwin its solicitor and filed in the clerk's office of said Court, a response to the petition of Nathaniel C. Sears, for allowance of fees, in the words and figures following towit:

ANSWER AND RESPONSE OF UNITED STATES TO PETITION OF N. C. SEARS FOR ALLOWANCE OF FEES.

In the Circuit Court of the United States, For the Northern District of Illinois, Eastern Division.

United States
vs.
Oberlin M. Carter *et al.* } Gen. No. 25980.

Response of the United States to Petition of Nathaniel C. Sears, For Allowance of Solicitor's fees.

And now comes the United States by Marion Erwin, Special Assistant to the Attorney General, and for answer and response to the petition of Nathaniel C. Sears for the allowance under the agreement of Nov. 6, 1901 of $6,000.00 from the fund in court to him for services rendered by him in said cause as the Attorney for said Oberlin M. Carter at Chicago, says:—

(1)

Respondent denies that there has been such compliance on the part of said defendants I. Stanton Carter, L. D. Carter, and Oberlin M. Carter, with the terms of said agreement of Nov. 6, 1901, as entitles them and their counsel to invoke the (7) and (8) paragraphs thereof.

And for specifications of the details in which the said defendants have failed to comply with the terms of said agreement, respondent refers to its response of file in the record, to the petition of H. G. Stone, chief counsel, for defendants, for final compensation for services as such chief counsel, which response is made a part of the response to the petition of said Sears as if incorporated herein.

(2)

Respondent says that the appearance of said Nathaniel C. Sears was never entered at, nor did he ever take part in

any of the hearings to take testimony in said cause, or proceedings before Examiners or the Master. Nor does it appear that he ever took part in any of the proceedings before this court other than at the hearing on the merits in September, 1906, to make an argument for about an hour on September 28, 1906 (reported in 38 pages of typewriting) before this court in said hearing. But his appearances were entered at the hearings before the court on September 18, 19, 20, 21, 26, 27, 28, Oct. 1 and 2, 1906.

That in the petition of the said H. G. Stone, chief counsel for said O. M. Carter, et al, for allowance of fees heretofore referred to, the following statement appears:—

"I was the only attorney for the defendants who went through the entire record and took the responsibility of selecting such parts of it as ought to be particularly presented to the court."

That it appears from the petition of said Sears that his employment by said Carter for which compensation is claimed was only for the purpose of making an oral argument in said cause.

(3)

Respondent further says that the allowance of Six Thousand Dollars as compensation to said Sears as local attorney for Carter in said cause at Chicago, would as respondent is advised, be a very exorbitant allowance in any event, and far beyond what was clearly contemplated by the agreement of Nov. 6, 1901, even if there had been full compliance by defendants with the terms of said agreement.

That by the agreement of Nov. 6, 1901, the sum of $5,000.00 was to be retained by said chief counsel for the aggregate compensation of all local counsel of said defendants in all the other districts, in which auxiliary bills were pending to wit:—New York, New Jersey, West Virginia, Georgia and Southern District of Illinois, and it was clearly contemplated that the local attorney in Chicago who might be required to look after formal proceedings in the absence of said H. G. Stone should be compensated on the same basis as the local counsel in the other districts, and that the attorneys' fees for the conduct of the case, chargeable on the fund in court, would be that of one chief counsel for said defendants, with only an allowance to such local attorney at Chicago, for the kind of formal services to be performed by the local counsel in other districts.

(4)

By reason of the premises respondent says that whether said agreement of Nov. 6, 1901, can be invoked by said defendants and their counsel and attorneys or not, that the fee claimed by said Sears is unreasonable and exorbitant, considering the limited extent and character of the services rendered, and the amount turned into the hands of receivers out of which all of the allowances provided for in the (7) and (8) paragraphs of the agreement were to be paid.

THE UNITED STATES OF AMERICA
By MARION ERWIN
Special Asst to the Attorney General

Before the undersigned personally comes Marion Erwin, Solicitor for Complainant in the above stated cause, who, being duly sworn, deposes and says, that he has had charge personally of the conduct of said cause from its beginning to the present time and is familiar with all the details of the proceedings in said cause; that the facts stated in the foregoing response so far as they are stated as being within his own knowledge are true, and in so far as they are stated from information derived from the record of said cause he believes the same to be true.

MARION ERWIN

Subscribed and sworn to before me this 8th day of April 1908.

H. S. STODDARD
Clerk Cir. Ct. of the U. S. Northern Dist of Illinois.

Endorsement Filed April 8, 1908 H. S. Stoddard Clerk.

And on towit: the 11th day of April 1908 came H G Stone Solicitor and filed in the clerk's office of said Court, a claim of Lyman E. Cooley for fees as expert Engineer and witness for defendant, with affidavit thereto attached in the words and figures following towit:

CLAIM OF LYMAN E. COOLEY.

The Carter Case

Memoranda of Services by Lyman E. Cooley.

Two interviews, of several hours each, with Attorney Stone—
Examination of Record, 10 days—
Dec. 2, 1905—Witness stand, all of morning session,
Dec. 4, 1905—Witness stand to 1 P. M.—
Dec. 13, 1905—Reading and correcting testimony—
Dec. 16, " " " " "
Sixteen days, at $100 per day $1600.00

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

United States
vs.
Oberlin M. Carter, *et al.* } No. 25980.

State of Illinois, }
County of Cook. } ss.

Lyman E. Cooley, being first duly sworn, on oath deposes and says:

That he rendered the service described in the foregoing and attached bill, and that the said services were reasonably and fairly worth the amount charged in said bill, and that no part thereof has been paid to this affiant, and the full amount of said bill is reasonably and justly due to this affiant.

LYMAN E. COOLEY.

Subscribed and sworn to before me this 3rd day of April, A. D. 1908.

MARY L. DOWNES,
Notary Public.

(Seal)

Endorsement: Filed April 11, 1908. H. S. Stoddard, Clerk.

And on to-wit: the 8th day of April, 1908, came the complainant by Marion Erwin, its solicitor, and filed in the clerk's office of said court, objections to the payment of the claim of Lyman E. Cooley, in the words and figures following, to-wit:

OBJECTIONS OF UNITED STATES TO CLAIM OF LYMAN E. COOLEY.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

United States
vs.
O. M. Carter, *et al.* } In Equity No. 25980.

And now comes the United States by Marion Erwin, Special Assistant to the Attorney General, and for objection to the bill of Lyman E. Cooley for services rendered in said cause as an expert witness on engineering for the defense, which has been presented to the court by H. G. Stone, chief counsel, for Oberlin M. Carter, for payment, says:

(1)

Respondent makes the same objection to the payment of said bill, of non-compliance by the defendants with the terms of said agreement of Nov. 6, 1901, that respondent has already made to the petition of said H. G. Stone for counsel fees.

(2)

Respondent says that if said defendants should be held to have so sufficiently complied with the agreement of Nov. 6, 1901, as to entitle them to invoke paragraph (8) of said agreement, that nevertheless the payment for the expert services of a civil engineer, for time in studying the record, and qualifying himself to testify as an expert on the engineering feature of the case, and in payment for his time as an expert witness on the same and in correcting his testimony, at the rate of $100.00 per day, is wholly without the scope of said agreement of Nov. 9, 1901.

That the provision for the services of an expert accountant, shows, under the application of the rule "Inclusio Unius est,

exclusio alterius," that it was never contemplated, the hire expert witnesses in other features of the case, was to be made a charge upon the fund.

That moreover the only charges of the said Cooley taxible against the fund under the agreement for taking testimony would have been the usual witness fees at the rate of $1.50 per day for attendance at the hearings.

Wherefore respondent objects to the payment of said bill out of the fund in court.

THE UNITED STATES OF AMERICA,
By MARION ERWIN,
Special Asst. to Atty. Gen'l.

Endorsement: Filed April 8, 1908. H. S. Stoddard, Clerk.

Before the undersigned personally comes Marion Erwin, Solicitor for Complainant in the above stated cause, who, being duly sworn, deposes and says, that he has had charge personally of the conduct of said cause from its beginning to the present time and is familiar with all the details of the proceedings in said cause; that the facts stated in the foregoing response so far as they are stated as being within his own knowledge are true, and in so far as they are stated from information derived from the record of said cause he believes the same to be true.

MARION ERWIN.

Subscribed and sworn to before me this 8th day of April, 1908.

H. S. STODDARD,
Clerk Cir. Ct. of the U. S., Northern Dist. of Illinois.

Endorsement: Filed April 8, 1908. H. S. Stoddard, Clerk.

And on to-wit: the 11th day of April, 1908, came H. G. Stone, solicitor, and filed in the clerk's office of said court a claim of the International Audit Co. with affidavit thereto, in the words and figures following, to-wit:

CLAIM OF INTERNATIONAL AUDIT CO. FOR SERVICES OF ROBERT NELSON, EXPERT ACCOUNTANT, FOR DEFENSE.

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

United States of America,
Complainant.
against
Oberlin M. Carter, *et al.*
Defendants.
} In Equity.

March 25, 1908.

To the International Audit Company, Chicago.

Fee for services of our Manager, Robert Nelson, C. A., Examining Government and Defendant's Exhibits as regards financial transaction, examining record, consultations with defendants and attorneys and giving evidence before Examiner Wyman, $1,000.00.

State of Illinois, } ss.
County of Cook. }

Robert Nelson being duly sworn says he is Manager of the International Audit Company, the claimant named in the claim hereunto attached; that the several items therein mentioned are just and true, that the services charged therein were rendered as therein charged, that the charge made is reasonable, and that there is now due and unpaid to said International Audit Company, after allowing all just credit, the sum of One thousand dollars.

ROBERT NELSON.

Subscribed and sworn to before me this 2nd day of April, A. D. 1908.

HENRY W. BORCHES,
Notary Public.

(Seal)

Endorsement: Filed April 11, 1908. H. S. Stoddard, Clerk.

And on to-wit: the 8th day of April, 1908, came the complainant by Marion Erwin, complainant's solicitor, and filed in the clerk's office of said court objections to the claim of the International Audit Co., in the words and figures following, to-wit:

OBJECTIONS OF UNITED STATES TO CLAIM OF INTERNATIONAL AUDIT CO. FOR SERVICES OF ROBERT NELSON.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

United States
vs.
O. M. Carter, *et al.*
} In Equity No. 25980.

And now comes the United States of America by Marion Erwin, Special Assistant to the Attorney General, and for objection to the bill of The International Audit Company, of Chicago, for services rendered by Robert Nelson, expert accountant, for $1,000.00, which has been presented to the Court by H. G. Stone, chief counsel for Oberlin M. Carter, for payment, says:

(1)

Respondent makes the same objection to the payment of said bill, of non-compliance by the defendants with the terms of said agreement of Nov. 6, 1901, that respondent has already made to the petition of said H. G. Stone for counsel fees.

(2)

Respondent says that if said defendants should be held to have so sufficiently complied with the agreement of Nov. 6, 1901, as to entitle them to invoke paragraph (8) of said agreement, that nevertheless clause (c) of said paragraph limited the allowance to be made to the "expenses of taking evidence" "including the services of an accountant at not exceeding ten dollars per day for his services when needed and actually employed, plus his expenses, if any."

That by the agreement it was to include an allowance to one expert accountant only.

That the said defendants employed and fully used to the end

of the case, Charles McPherson as such accountant, and the court has already allowed and paid said McPherson the sum of $1,580.73 for his services as such accountant out of the fund in court.

That in the taking of the testimony for the defense the said Nelson was used only as expert witness to corroborate the accounts and compilations of said McPherson as an expert accountant.

That the services of said Nelson to the said defendants were rendered entirely outside of the scope of said agreement of Nov. 6, 1901.

(3)

That the bill for the services of said Nelson, is not even rendered in accordance with, or at the rates provided for the compensation which was to be paid for the one accountant who was to be employed under the agreement.

(4)

Wherefore this respondent objects to the payment of said bill or any part thereof from the fund in court.

THE UNITED STATES OF AMERICA,
By MARION ERWIN,
Special Asst. to the Atty. Genl.

Before the undersigned personally comes Marion Erwin, Solicitor for Complainant in the above stated cause, who, being duly sworn, deposes and says, that he has had charge personally of the conduct of said cause from its beginning to the present time and is familiar with all the details of the proceedings in said cause; that the facts stated in the foregoing response so far as they are stated as being within his own knowledge are true, and in so far as they are stated from information derived from the record of said cause he believes the same to be true.

MARION ERWIN.

Subscribed and sworn to before me this 8th day of April, 1908.

H. S. STODDARD,
Clerk Cir. Ct. of the U. S., Northern Dist of Illinois.

Endorsement: Filed April 8, 1908. H. S. Stoddard, Clerk.

And on to-wit: the 8th day of April, 1908, came the complainant and filed in the clerk's office of said court, a motion to have the compensation of Max H. Whitney, receiver, fixed, with agreement attached thereto, in the words and figures following, to-wit:

MOTION TO FIX COMPENSATION OF MAX H. WHITNEY, RECEIVER.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

United States
vs.
O. M. Carter, *et al.* } In Equity No. 25980.

And now comes the United States by Marion Erwin, Special Assistant to the Attorney General, its solicitor, and moving the court to fix the amount of the allowance of fees to Max H. Whitney, receiver in the above stated cause pursuant to the agreed state of facts, made between the parties and said Max H. Whitney, hereto attached, says:

That for the purposes of fixing the compensation of said receiver, it appears by said agreement, that:

The value of the personal estate, including all choses in action which went into the hands of the receiver, including coupons and interest subsequently collected, was: $111,541.76

That said assets handled by the receiver consisted mainly of railroad bonds; that there was no real estate which went into the hands of the receiver.

That the services of the receiver have consisted of taking care of said assets, collecting the coupons or interest, selling through brokers under orders of the court certain of the said securities, and in paying out under the orders of the court, from the moneys in his hands, allowances made by the court from the fund.

That all costs and expenses incident to his administration including costs of receiver's bond, the receiver has already taken credit for in his reports.

While recognizing that the fixing of receiver's compensation in this cause is within the judicial discretion of the court, complainant says it was informed by said receiver that

he regarded the provisions of the statute of Illinois regulating the fees to be allowed to Administrators, as a just basis upon which his allowance should be fixed, viz:

"Executors and administrators shall be allowed as compensation for their services a sum not exceeding six per centum on the amount of personal estate."

in addition to the foregoing expenses already taken credit for by the receiver in his reports.

That six per cent on $111,541.76 is $6,692.50

That such allowance would in the opinion of complainant be the maximum allowance which should in any event be made to said receiver.

That the said receiver has already been paid the sum of $3.000.00 as an allowance on his compensation.

That to complete his said administration there are of said personal estate (value estimated as stated in said agreement) certain bonds and choses in action which in any event will have to be sold and the proceeds disbursed under the orders or decree of the court or paid into the Treasury as the case may be, as follows:

Bonds	$61,000.00
Colehour note (estimated value)	3,000.00
Cash in hand	1,612.49
	$65,612.49

That under said agreement complainant moves the court to provide in any order fixing the receiver's compensation the proportion of said allowance for full compensation for all services of the receiver, which shall be withheld, until he completes administration of said assets in his hands as aforesaid.

THE UNITED STATES OF AMERICA,
By MARION ERWIN,
Spl. Ass't. to the Att'y General, Complainant's Solicitor.

AGREEMENT RELATIVE TO FIXING COMPENSATION OF MAX H. WHITNEY, RECEIVER.

In the Circuit Court of the United States, Northern District of Ilinois, Eastern Division.

The United States
vs.
O. M. Carter, *et al.* } Gen. No. 25980.

Agreement relative to Application of Max H. Whitney, Receiver, for Compensation.

It is agreed between the parties interested in the assets which went into the hands of Max H. Whitney, receiver, in the above stated cause as follows:

(1) That the said Max H. Whitney was on the 27th day of August, 1901, appointed receiver by said Circuit Court of the United States for the Northern District of Illinois and has continued in said appointment up to the present time. That within a day or two thereafter he was appointed receiver under the auxiliary bill filed by the complainant against the same defendants in the Southern District of Illinois and has continued in said appointment up to the present time. That such of the assets as the defendants may have held in the Southern District of Illinois were delivered to the said Max H. Whitney, receiver, in the Northern District of Illinois under the said bill filed in the said Northern District of Illinois and were inventoried by him in said cause and that none of the assets were delivered to him as receiver for the Southern District of Illinois.

(2) That on November 11, 1901. there was turned over by I. Stanton Carter, defendant, to the said Max H. Whitney, receiver, in pursuance of the agreement of November 6, 1901, between the parties, and the orders of the court, railroad bonds of the par value of $60,000.00

Also one note, C. W. Colehour, due October 17, 1903, which the receiver has not been able to collect, but it has an estimated value of possibly $3,000.00; par value $11,660.00; 3,000.00

Cash received from N. W. Harris & Co., defendant, 770.40

March 13, 1903, from attorneys of Lorenzo D. Carter, defendant, ten Kentucky Central bonds, par value 10,000.00

January 8, 1904, one Kentucky Central bond, par value	1,000.00
One Michigan Telephone Company bond certificate, par value	1,000.00
January 13, 1904, from attorneys of Lorenzo D. Carter, eleven Kentucky Central bonds, par value,	11,000.00
January 15, 1904, received from attorneys of Lorenzo D. and I. Stanton Carter, cash proceeds of certain coupons collected by them after the appointment of a receiver, aggregating	1,825.00
	$88,595.40

For the purpose of estimating the receiver's fees the par value of said bonds may be taken as a basis of their real value, and the Colehour note estimated at $3,000.00

(3) That in addition to the above the said receiver has collected coupons and interest on the foregoing assets which came into his hands as such receiver for the Northern District of Illinois in the sum of $22,946.36.

Also that the said receiver has sold under the orders of the Court, of the aforesaid securities, twenty-two bonds of the par value of $22,000.00, receiving therefor net proceeds amounting to $22,287.67.

(4) Also that the said receiver from the cash funds which came into his hands as aforesaid has disbursed under the orders of the court the sum of $46,216.94.

(5) That the said receiver under the orders of the court has been advanced on account of his compensation from time to time from said cash funds in his hands, sums aggregating $3,000.00.

(6) That there is now remaining in the hands of the said receiver for the Northern District of Illinois sixty-one of the aforesaid bonds of the par value of $61,000.00 and also the said Colehour note, and $1,612.49, in cash.

(7) It is agreed between the parties that the compensation to be fixed by the Circuit Court of the Northern District of Illinois for the services of said Max H. Whitney, shall be in full for his services as receiver under the bills filed in the Circuit Courts of the Northern District of Illinois and under the auxiliary bill filed as aforesaid in the Southern District of Illinois.

(8) It is agreed that the compensation which the said Max

H. Whitney may be entitled to receive as receiver under the auxiliary bill filed in the Southern District of Georgia in which he was appointed receiver by that court and for the handling of the assets tied up by proceedings there, put in the hands of the receiver, shall be left open for that court to fix and determine.

(9) It is agreed that the parties to the said cause consider that the said Max H. Whitney has properly and satisfactorily performed his services as receiver.

(10) It is agreed between the said receiver and the said parties that the said Circuit Court of the Northern District of Illinois may fix the said receiver's fees on the assumption that there will be no appeal and to include the sale or collection of the said assets, bonds and note, still remaining in his hands as aforesaid and to include the disbursements of the said funds in his hands or which may come into his hands from such sale or collection and the compensation so fixed for said receiver shall be in full for all services to be rendered by him in the case except for the services of receiver in the Southern District of Georgia, as aforesaid. But this agreement shall not preclude any of the parties to said cause from appealing from the compensation fixed by said court for such receivership if they should see proper to do so. If the said parties or either of them should appeal said cause without either appealing from the compensation fixed for the receiver, a reasonable proportion of the compensation so fixed for said receiver shall be held up as representing compensation which the receiver would be estimated to be entitled to for the services connected with the handling of the assets remaining in his hands.

(11) Nothing in this agreement shall be construed as cutting off the right of any of the parties to said cause to appeal from any order or decree in said cause.

Dated this April 2, 1908.

MARION ERWIN,
Special Asst. to Atty. Genl., Sol. for Complainant.
HORACE G. STONE,
Solr. for Dafts.
O. K. MAX H. WHITNEY,
As Reeciver as Above.

It is understood that the foregoing agreement is not to be used as bearing in any way on the claim of defendant's chief

counsel for fees from any or all of the assets in any of the districts in which the bills or auxilliary bills are pending.

April 2, 1908.

MARION ERWIN,
Sp. Asst. to the Atty. Genl., for Complt.
HORACE G. STONE,
Solr. for Defts.

Endorsement: Motion and agreement as to fixing compensation of Max H. Whitney, receiver, filed April 8, 1908. H. S. Stoddard, Clerk.

RECEIVERS REPORTS OF RECEIPTS AND DISBURSEMENTS.

And on towit: the 14th day of April 1903 came Max H. Whitney Receiver, and filed in the clerk's office of said Court, his report in the words and figures following towit:

REPORT OF M. H. WHITNEY, RECEIVER, FILED APRIL 14, 1903.

In the Circuit Court of the United States, For the Northern District of Illinois, Northern Division.

United States of America
v.
Oberlin M. Carter *et al.*

To the Honorable, the Judges of Said Court:

Max H. Whitney, Receiver in the above-stated cause, respectfully submits this his report in the above-stated cause:

Assets Received
(Northern District of Illinois)

Nov. 11, 1901 Received from I. Stanton Carter the following securities:—

(a) 10 Missouri Pacific R. R. Bonds 6% 1st. Cons. 1920 May and Nov. Numbers 1017—4452, 4940, 5147, 6690, 7129, 7608, 7609, 7610, 13,684. May 1901 and succeeding coupons attached.

Par value $10,000.00

(b) 10 General Reading R. R. Bonds, 4%1997.
January and July Numbers 51,900—51,901 51,902 7,054 — 7,055 — 7,056 — 7,057 — 7,058—7,059—7,060.
January and July, 1901 and succeeding Coupons attached.
Par Value $10,000.00

(c) 5 Hocking Valley R. R. Bonds, First Consolidated General 4 1/2%—1999
January and July, Numbers 4757—4758—4759—4760—4761
January and July, 1901, and succeeding coupons attached.
Par Value $5,000.00

(d) 10 Wabash R. R. Bonds, Seconds 5%, 1939—Feby. and Aug. Numbers 252—468—536 642 — 1411 —1412—1,455—1,621—6,563 10,749,
February and August, 1901 and succeeding coupons attached.
Par Value $10,000.00

(e) 10 Peoria and East Illinois R. R. Bonds.
Consolicated 4%—1940—April and October, Numbers 253—1,415—1,702—6,625—6,626—6,771—6,772—6,773—6,776—6,777.
April and October, 1901 and succeeding Coupons attached.
Par Value $10,000.00

(f) 15 Chesapeake & Ohio R. R. Bonds,
General 4 1/2%—1992. March and September, Numbers 2,140—2,153—2,154—8,929 — 17,445 — 17,735 — 18,128 — 24,358 — 24,776 — 24,777 — 24,871 — 24,872 — 24,873 — 24,874 — 24,875,
March and September, 1901, and succeeding Coupons attached,
Par Value $15,000.00

(g) C. W. Colelour, Note, dated Chicago, Illinois October 17, 1901, and due on or before two years after date; secured by assignment of Judgment in favor of C. W. Colehour in case of Colehour vs. Roby, Circuit Court of Cook County;
Face Value of Note $11,660.00

(h) Received from N. W. Harris & Co., Chicago, Illinois, the balance to the credit of I. Stanton Carter, on their books, Cash.. 770.40

March 13, 1903 See cash statement below

(i) Received from Joseph H. Winkler through H. G. Stone, on behalf of Lorenzo D. Carter,—

10 Kentucky Central Railway Bonds, 4%, 1997—January and July, Numbers 3,789 — 3,790 — 3,791—3,792—3,793—3,794—3,795—3,796—3,797—3,798, with Coupons attached commencing July, 1903,

Par Value $10,000.00

Cash Statement
(Southern District of Illinois Collections)

Received from N. W. Harris & Co. Cash "(i) above"			$770.40
Coupons collected on 10 Missouri Pacific R. R. Bonds "(a)" above			
May	1901	Coupons	300.00
Nov.	1901	"	300.00
May	1902	"	300.00
Nov.	1902	"	300.00
Coupons collected on 10 General Reading R. R. Bonds "(b)" above—			
January	1901	Coupons	200.00
July	1901	"	200.00
January	1902	"	200.00
July	1902	"	200.00
January	1903		200.00
Coupons collected on 5 Hocking Valley R. R. Bonds "(c)" above—			
January	1901	Coupons	112.50
July	1901	"	112.50
January	1902	"	112.50
July	1902	"	112.50
January	1903	"	112.50
Coupons collected on 10 Wabash 2nds R. R. Bonds "(d)" above—			
February	1901	Coupons	250.00
August	1901	"	250.00
February	1902	"	250.00
August	1902	"	250.00
February	1903	"	250.00

Coupons collected on 10 Peoria and East Illinois R. R. Bonds "(e)" above—			
April	1901	Coupons	200.00
October	1901	"	200.00
April	1902	"	200.00
October	1902	"	200.00
April	1903	"	200.00
Coupons collected on 15 Chesapeake and Ohio R. R. Bonds "(f)" above—			
March	1901	Coupons	337.50
September	1901	"	337.50
March	1902	"	337.50
September	1902	"	337.50
March	1903	"	337.50
Total Cash Collections, Chicago			$7,470.40
Interest collected on Deposits to April 2, 1903, inclusive			108.46
			$7,578.86

Disbursements—Northern District Illinois

Nov. 12, 1902 Paid allowance to Max H. Whitney, Receiver, on account, Order of Court Nov. 22, 1902,	1,000.00
Dec. 16, 1902 Paid G. Russell Leonard, Master's Stenographer, per order of Court, Dec. 16, 1902,	235.45
1901	
Nov 12 Receivers Bond Northern District of Illinois	13.
" " Southern " " "	13.
Expense to Oakland Illinois and return	15.50
Telegram to Erwin	.40
" " "	.30
" " "	.40
Expressage on $60000 Bonds	22.50
Stamp on Bonds	.50
Safe Deposit Box	16.
Nov 29 Certified Copies Assignment Colehour to Carter	1.80
Receiver's $80000—Surety Bond	200.
Dec 7 Expressage on Stocks from Mackall	7.75

1902	
Sept 8 Surety Bond. Northern District of Illinois	25.
Nov 8 Safety Deposit Box	16.
Receiver's $80000—Surety Bond	200.
1903	
Mch 10 Expresage on $10000 Bonds	3.75
Exchange Paid on Coupons Collected	3.20
April 14 Balance on hand in Bank	5804.31
	$7578.86

April 14 1903 Balance on hand in Bank this date $5804.31

—Southern District of Georgia—

Assets in the Southern District of Georgia, Received by Max R. Whitney, Receiver, under Receivership, extended to the Southern District of Georgia, under the order of the Circuit Court of the United States for the Southern District of Georgia, on auxiliary bill filed in that District.

Assets

Dec. 7, 1901

(j) Received from W. W. Mackall of Mackall & Anderson, attorneys of Savannah, Ga., for O. M. Carter, Bierne Gordon Note, dated Nov. 4, 1896, at 5 years and 57 days,

Face Value	$10,000.00
Bierne Gordon, Interest Notes on the above, Dated Nov. 4, 1896, at 55 mons. and 26 days Face Value	300.00
" " 4, 1896, at 61 mons. and 26 days Face Value	300.00

Mortgage Securing the above on Property on Savannah. See notation in statement of collections by Wylly agent below—note & Coupons delivered to Marion Erwin Esq.

Dec. 7, 1901

(k) Received from W. W. Mackall of Mackall and Anderson, attorneys of Savannah, Ga., for O. M. Carter,

150 shares Savannah Tow Boat Co. Stock, Certificates as follows:

No. 56	dated	July	1, 1890,	5	shares;
81	"	"	3, "	5	"
113	"	April	21, 1891	1	"
123	"	June	16, 1891	4	"
133	"	Jany.	18, 1892	10	"
145	"	May	13, 1892	15	"
152	"	Aug.	31, 1892	10	"
170	"	Oct.	22, 1892	25	"
217	"	Feby.	20, 1893	25	"
235	"	March	10, 1894	20	"
242	"	May	27, 1895	20	"
244	"	May	27, 1895	10	"

150 shares.

Par Value $15,000

Dec. 7, 1901

(l) Received from W. W. Mackall, of Mackall and Anderson, attorneys of Savannah, Ga., for O. M. Carter,

25 Shares Savannah Brewing Co. Stock Certificates, viz:

No. 431, dated June 1, 1894, 12 shares
" 467 " " 29, 1895, 13 "

25 shares

Par Value 2,500.00

Dec. 7, 1901

(m) Received of W. W. Mackall of Mackall and Anderson, of Savannah, Ga., for O. M. Carter,—

15 Shares Savannah Lighterage and Transfer Co. Stock Certificate, viz.:

No. 29, dated Sept. 15, 1891, 15 Shares,
Par Value 1,500.00

Dec. 7, 1901

(n) Received of W. W. Mackall of Mackall and Anderson, of Savannah, Ga., for O. M. Carter, as follows:
1 Share of Stock, Greenwich Park Association,
Par Value 100.00

(o) 5 Shares of Stock of Savannah Cotton Mills Co., Certificate No. 123, dated Nov. 3, 1892,
Par Value 500.00

(p) 25 Shares of Stock of The Seaboard Company,
Par Value 2,500.00

Nov. 22, 1901

(q) Received from H. G. Stone, Attorney, Order dated Nov. 22, 1901, of O. M. Carter, on W. W. Mackall, of Mackall and Anderson, of Savannah, Ga., for the following additional assets not enumerated above:
100 Shares of stock of the Hunting Island or Port Savannah Company, or Proceeds,
Par Value 10,000
See collections by Wylly agent below

Jany. 2, 1902

(r) Received from H. G. Stone, Attorney, Order dated Jany. 3, 1902, of O. M. Carter, on W. W. Mackall of Mackall and Anderson, of Savannah, Ga., for the following additional asset not enumerated above:
Thos. Martin Mortgage Note, dated Nov. 8, 1895, and due Nov. 8, 1896,
Face Value 6,000.00
See collections by Wylly Agt. below

Cash Collections Reported by Albert Wylly, Receiver's Agent, Savannah, Georgia.
(Southern District of Georgia.)

January 7, 1902, Dividend Collected on 15 Shares Savannah Lighterage and Transfer Co. Stock, "(m)" above, ...$262.50

Dividends collected on 150 Shares Propeller Tow Boat Co. Stock of Savannah, "(k)" above.....$2,850.00

$3,112.50

January 24, 1902 Dividend collected on 25 shares Stock of Savannah Brewing Co. of Savannah, "(l)" above.....	150.00
February 5, 1902 Balance due on Bierne Gordon Notes "(j)" above, in excess of value of Gordon's Insurance Policy held by Frank W. Hubby, Receiver, under auxiliary Bill pending in New York, said balance fixed by decree of U. S. Circuit Court, Southern Dist. of Ga., and collected by Albert Wylly, Receiver's Agent,.....	4,884.33
February 15, 1902 Collected by Albert Wylly, Receiver's Agent, from J. K. Garnett (Purchaser prior to Receivership) Proceeds of Sale of 100 Shares Hunting Island or Port Savannah, Co. stock, "(q)" above	6,500.00
February 15, 1902, Collected by Albert Wylly, Receiver's Agent, Thos. Martin Mortgage Note, "(r)" above,.....$6,000.00	
Interest 2,284.03	
	$8,284.03
Sept. 11, 1902 Collected by Albert Wylly, Receiver's Agent, Dividend on 15 Shares Savannah Lighterage & Transfer Co. Stock, "(m) above"	75.00
Total Savannah Collections to Sept 11, 1902,.....	$23,005.86

Under the order of the Circuit Court of the United States for the Southern District of Georgia, all of the funds as above collected by Albert Wylly, Receiver's Agent, at Savannah, were deposited when collected in the Registry of that Court, subject to the order of that Court, in the Merchants National Bank of Savannah, Ga., to the credit of said cause, as per duplicate deposit tickets, delivered to the Receiver by said Receiver's Agent.

Respectfully submitted,

MAX H. WHITNEY

April 14, 1903. *Receiver.*

Endorsement Filed April 14, 1903 Marshall E. Sampsell Clerk.

And on to wit: the 29th day of January, 1904, came Max H. Whitney, receiver, and filed in the clerk's office of said court, a report in the words and figures following to wit:

REPORT OF M. H. WHITNEY, RECEIVER, FILED JANUARY 29, 1904.

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

United States of America
v.
Oberlin M. Carter *et al.*

To the Honorable, the Judges of said Court:

Max H. Whitney, Receiver in the above-stated cause, respectfully submits this his report of his transactions as Receiver since his last report of April 14, 1903.

Assets Received from Defendants Since April 14, 1903. (Northern District of Illinois.)

Jan. 8. 1904. Received from I. Stanton Carter the following securities and cash:—

(a) 1 Kentucky Central R. R. Co. Bond, No. 5119, due July 1, 1997 (with all coupons attached commencing with coupon due July 1, 1904).
Par value ..... $ 1,000.00

(b) 1 certificate of deposit No. 1057 issued by Old Colony Trust Co. of Boston, Mass., for one Michigan Telephone Co. Bond dated Jan. 2, 1899.
Par value ..... $ 1,000.00

(c) Jan. 15, 1904, Cash from I. Stanton Carter through H. G. Stone for 5 coupons collected on the above Ky. Central Bond January and July, 1902, and January and July, 1903, and January, 1904.
Cash ..... $ 100.00

(d) Jan. 15, 1904, Cash from I. Stanton Carter through H. G. Stone for coupon collected on the above Michigan Telephone Co. Bond January, 1902.
Cash ..... $ 25.00

Jan. 13 ,1904. Received from J. H. Winkler, Attorney for L. D. Carter, the following securities and cash:—

(e) 11 Kentucky Central Ry. Co. Bonds for $1,000.00 each, due July 1, 1997, with all coupons attached commencing with coupon due July 1, 1904.

Said Bonds being numbered 3,776, 3,782, 3,783, 3,784, 3,785 3,786, 3,787, 3,788, 5,960, 5,961 and 5,964.

Par value $11,000.00

(f) Jan. 15, 1904, Cash from L. D. Carter through H. G. Stone, Attorney, for coupons collected on the above 11 Bonds, July 2, 1902, to Jan. 1, 1904, inclusive, 55 coupons at $20,

Cash ..... $ 1,100.00

For coupons collected on the 10 Kentucky Central Ry. Co. Bonds, which bonds were turned over to the Receiver March 13, 1903, ex. said coupons per Receiver's last report, to wit:—

Coupons Jan. 2, July 1, 1902, January, 1903, 30 coupons at $20,

Cash ..... $ 600.00

Cash Statement.
Northern District of Illinois.

April 14, 1903, Balance on hand per last report..... $ 5,804.31

May 2, 1903, Collected May, 1903, coupons on 10 Missouri Pacific Bonds ..... $ 300.00

May 2, 1903, Collected Interest on $4,500 on deposit First National Bank of Chicago..... $ 7.50

July 3, 1903, Collected Interest on $4,500 on deposit as above ..... $ 15.00

July 3, 1903. Collected July, 1903, coupons on 10 Reading R. R. Bonds ..... $ 200.00

July 3, 1903. Collected July, 1903, coupons on 5 Hocking Valley R. R. Bonds..... $ 112,50

July 3, 1903. Collected July, 1903, coupons on 10 Kentucky Central Bonds..... $ 200.00

Sept. 1, 1903. Collected Interest on deposit at First National Bank as above ..... $ 14.50

Sept. 1, 1903. Collected August, 1903, coupons on 10 Wabash R. R. Bonds..... $ 250.00

Sept. 1, 1903. Collected September, 1903, coupons on 15 Chesapeake & Ohio 4½% R. R. Bonds.....$ 337.50
Dec. 5, 1903. Collected November, 1903, coupons on 10 Missouri Pacific R. R. Bonds.....$ 300.00
Dec. 5, 1903. Collected October, 1903, coupons on 10 Peoria & Eastern R. R. Bonds.....$ 200.00
Jan. 8, 1904. Collected January, 1904, coupons on 10 Reading R. R. Bonds.....$ 200.00
Jan. 8, 1904. Collected January, 1904, coupons on 5 Hocking Valley R. R. Bonds.....$ 112.50
Jan. 8, 1904. Collected January, 1904, coupons on 10 Kentucky Central R. R. Bonds.....$ 200.00
Jan. 15, 1904. Cash collected from I. Stanton Carter as specified in clause (c) and (d) of this report..$ 125.00
Jan. 15, 1904. Cash collected from L. D. Carter as Specified in clause (f) of this report.....$ 1,700.00

Total.....$10,078.81

Disbursements.
Northern District of Illinois.

April 27, 1903. Paid W. M. Booth, Master in Chancery, per order of Court.....$ 750.00
June 17, 1903. Paid Horace G. Stone for Life Insurance premium on life of O. M. Carter per order of Court of June 8, 1903.....$ 453.00
Oct. 29, 1903. Paid premium on Receiver's Bonds for Northern & Southern Districts of Illinois...$ 225.00
Nov. 9, 1903. Paid National Safe Deposit Co., of Chicago for safety deposit box.....$ 16.00
Jan. 13, 1904. Paid Express changes on 11 Kentucky Central Bonds from J. H. Winkler, received as per clause (e) of this report.....$ 11.25

Total.....$ 1,455.25

Cash debits to date as above.....$10,078.81
Cash credits to date as above.....$ 1,455.25

Cash balance on hand—Northern District of Illinois to date.....$ 8,623.56

No collections from the Southern District of Georgia reported by Receiver's agent since my last report of April 14, 1903. Under orders of the Court in that District, all funds collected there are deposited in the Registry of the Court subject to the orders of that Court.

Respectfully submitted,

MAX H. WHITNEY,
Receiver.

Endorsement: Filed January 29, 1904. Marshall E. Sampsell, Clerk.

And on to wit: the 16th day of February, 1905, came Max H. Whitney, Receiver, and filed in the clerk's office of said Court, a report in the words and figures following to-wit:

REPORT OF MAX H. WHITNEY FILED FEBRUARY 16, 1905.

In the United States Circuit Court, Northern District of Illinois, Northern Division.

United States of America
v.
Oberlin M. Carter *et al.* } No.

To the Honorable, Christian C. Kohlsaat, Judge of said Court:

And now comes Max H. Whitney, receiver herein, and duly files the following statement of his receipts and disbursements herein since the last report:

Jan. 13, 1904. Balance on hand as per report filed	$8,623.56
Feb. 1904 coupons on 10 Wabash R. R. bonds	250.00
Mch. 1904 coupons on 15 C. & O. R. R. bonds	337.50
Int. on cert. of deposit	45.00
April 1904 coupons on 10 Peoria & E. R. R. bonds	200.00
May 1904 coupons on 10 Mo. Pac. R. R. bonds	300.00
Int. on deposit (cert.)	10.90
Sale one Michigan Tel. Co. bond cert.	925.00

July 1904 coupons on 10 Reading R. R. bonds	200.00	
July 1904 coupons on 5 Hocking Val. R. R. bonds	112.50	
July 1904 coupons on 22 Ky. Central R. R. bonds	440.00	
August 1904 coupons on 10 Wabash bonds	250.00	
Sept. 1904 coupons on 15 C. & O. R. R. bonds	337.50	
October 1904 coupons on 10 Peoria & E. R. R. bonds	200.00	
Nov. 1904 coupons on 10 Mo. Pac. R. R. bonds	300.00	
Jan. 1905 coupons on 5 Hocking Val. R. R. bonds	112.50	
Jan. 1905 coupons on 10 Reading R. R. bonds	200.00	
Jan. 1905 coupons on 22 Ky Central R. R. bonds	440.00	
February 1905 coupons on 10 Wabash R. R. bonds	250.00	$13,534.46

Disbursements.

Feb. 8, 1904, A/c receiver's fees, order of Ct.	$1000.00	
Mch. 1, H. G. Stone, order of Ct. Feb. 15, 1904,	6000.00	
May 3, R. H. Wyman, order of Ct. April 27, 1904	406.00	
May 3, H. G. Stone, order of Ct. Apl. 27, 1904	1089.94	
June 26 Appearance in Coleman v. Roby	3.00	
Sept. 1 H. G. Stone—Order of Ct. (Ins. premium)	453.00	
Oct. 14 O. M. Carter (Agt. Oct. 6, 1894)	1000.00	
Oct. 17 Premiums on Surety bonds	225.00	
Nov. 9 Nat'l Safety Dep. Co. for box	15.00	10,191.94
Balance on hand February 14th, 1905		$ 3,342.52

MAX H. WHITNEY,
Receiver.

Max H. Whitney makes oath and says that the foregoing report subscribed by him is true.

MAX H. WHITNEY.

Subscribed and sworn to before me this 16th day of February, 1905.

MARSHALL E. SAMPSELL,
Clerk.

Endorsement: Filed Feby. 16, 1905. Marshall E. Sampsell, Clerk.

And on to wit: the 17th day of August, 1906, came Max H. Whitney, Receiver, and filed in the clerk's office a report in the words and figures following to wit:

REPORT OF MAX H. WHITNEY, RECEIVER, FILED AUG. 17, 1906.

In the United States Circuit Court, Northern District of Illinois, Eastern Division.

United States of America
vs.
Oberlin M. Carter *et al.*

And now comes Max H. Whitney, the duly appointed and qualified receiver herein and respectfully shows that since his last report filed herein on February 14th, 1905, his cash receipts and cash disbursements herein have been as follows:

Cash Receipts February 14th, 1905.

1905.		
Feb. 14	Feby. 1905 coupons on Wabash 5% bonds	$ 250.00
	Sale 5 M Hocking Valley 4½% bonds at 111¼	5543.75
	Mch. 1905, 15 Ches. & Ohio 4½% coupons	337.50
	April 1905, 10 Peoria & Eastern 4% coupons,	200.00
	May 1905, 10 Mo. Pacific 6% coupons,	300.00
	July 1905, 22 Ky. Central 4% coupons,	440.00
	July 1905, 10 Reading 4% coupons,	200.00
	Aug. 1905, 10 Wabash 5% coupons,	250.00
	Sept. 1905, 15 Ches. & Ohio 4½% coupons,	337.50
	Oct. 1905, 10 Peoria & Eastern 4% coupons	200.00
Oct. 7.	Sale 5 M Ky. Central 4% bonds at 101½	5075.00
	Nov. 1905, 10 Mo. Pacific 6% coupons,	300.00

1906.		
	Jan. 1906, 17 Ky Central 4% coupons,	340.00
	Jany. 1906, 10 Reading 4% coupons,	200.00
Jan. 4.	Sale 5000 Ky. Central 4% bonds at 99-Com.	4943.75
	Feb. 1906, 10 Wabash 5% coupons,	250.00
	March 1906, 15 Ches. & Ohio 4½% coupons,	337.50
	April 1906, 10 Peoria & Eastern 4% coupons,	200.00
	May 1906, 10 Mo. Pacific 6% coupons,	300.00
June 25	Sale 2000 Ky. Central 4% bonds at 99	1980.00
	July 1906, 10 Ky. Central 4% coupons,	200.00
	July 1906, 10 Reading 4% coupons,	200.00
	August 1906, 10 Wabash 5% coupons,	250.00

Cash Disbursements from February 14, 1905.

Check No. 30	M. H. Whitney, account fees—order of court	$ 500.00
1	H. G. Stone, account fees—order of court	5000.00
2	O. M. Carter, Expenses—order of court	1100.00
3	O. M. Carter, Expenses, Feb. '05, order of ct.	150.00
4	O. M. Carter, Expenses, Mch. '05, order of ct.	150.00
5	O. M. Carter, Expenses, Apl. '05, order of ct.	150.00
6	W. R. Hewlett, Examiner, order of ct. 5/2/05	37.80
7	R. H. Wyman, Examiner, order of ct. 4/20/05	770.00
8	O. M. Carter, Expenses, May '05, order of ct.	150.00
9	O. M. Carter, Expenses, June '05, order of ct.	150.00
40	O. M. Carter, Expenses, July, '05, order of ct.	150.00
1	O. M. Carter, Expenses, Aug. '05, order of ct.	150.00
2	O. M. Carter, Expenses, Sep. '05, order of ct.	150.00
3	Gunthorp, Warren Ptg. Co. order ct. 9/5/05	977.60

4—H. G. Stone, order ct. 9/5/05.....	4250.00
5—R. S. Wyman, order ct. 10/6/05.....	300.00
6—Am. Surety Co. Bond.....	25.00
7—R. S. Wyman, Order of Court.....	300.00
8—R. S. Wyman, "	600.00
9—M. H. Whitney, Account fees, 11/8/05	500.00
50—Nat. Safe Deposit Company.....	15.00
1—Am. Surety Company, Bond.....	100.00
2—O. M. Carter, October and November..	300.00
3—R. H. Wyman, Order of Court, 11/26/05	200.00
4—R. H. Wyman, Order or Court, 11/26/05	300.00
5—R. H. Wyman, Order of Court, 12/12/05	500.00
6—H. G. Stone, Order of Court	2500.00
7—R. H. Wyman, Order of Court, 1/3/06	1000.00
8—O. M. Carter, December and January.	300.00
9—M. E. Sampsell, Clerk, account.....	78.40
60—O. M. Carter, February.....	150.00
1—O. M. Carter, March and April.....	300.00
2—O. M. Carter, May and June.....	300.00
3—Gunthorp-Warren Co., Order court, 6/18/06	1540.00
4—R. H. Wyman, Order court, 6/19/06..	700.00
5—O. M. Carter, July account.....	150.00

E. & O. E. Cash on hand 8/1/06.....$1733.72

Respectfully submitted,

MAX H. WHITNEY,
Receiver.

State of Illinois, }
County of Cook. } ss.

Max H. Whitney makes oath and says that the foregoing is a true and correct report of his cash receipts and cash disbursements in the above matter, from February 14th, 1905, to August 1st, 1905, inclusive.

MAX H. WHITNEY.

Subscribed and sworn to before me this 17th day of August, 1906.

MARSHALL E. SAMPSELL,
Clerk.

Endorsement: Filed Aug. 17, 1906. Marshall E. Sampsell, Clerk.

And on to-wit: the 4th day of February, 1908, came Max H. Whitney, receiver, and filed in the clerk's office of said court a report in the words and figures following, to-wit:

REPORT OF MAX H. WHITNEY, RECEIVER, FILED FEBY. 4, 1908.

In the United States Circuit Court, Northern District of Illinois, Eastern Division.

United States of America
vs.
Oberlin M. Carter, *et al.* } No.

And now comes Max H. Whitney, the duly appointed and qualified Receiver herein, and respectfully shows that since his last report filed herein on the 1st day of August, A. D. 1906, his cash receipts and cash disbursements herein have been as follows, from August 1st, 1906:

Cash Receipts.

Cash on hand August 1st, 1906,		$1,733.72
Sept. 1906 15 Ches. & Ohio 4½% Coupons	$337.50	
Oct. 1906 10 Peoria & Eastern 4% Coupons	200.00	
Nov. 1906 10 Mo. Pacific 6% Coupons,	300.00	
Jan. 1907 10 Ky. Central 4% Coupons	200.00	
Jan. 1907 10 Reading 4% Coupons	200.00	
Jan. 2 1907, Sale 3 M. Ky. Central 4% Bonds at 96 plus Int.	2,886.67	
Feb. 1907 10 Wabash 5% Coupons,	250.00	
Mch 1907 15 Ches & Ohio 4½% Coupons	337.50	
Apr. 1907 10 Peoria & Eastern 4% Coupons	200.00	
May 1907 10 Mo. Pacific 6% Coupons,	300.00	
July 1907 10 Reading 4% Coupons,	200.00	

July 1907 7 Ky. Central 4% Coupons,	140.00	
Aug. 1907 10 Wabash 5% Coupons	250.00	
Aug. 13, 1907 Sale 1 Ky. Central 4% Bonds at 93½-1.50	933.50	
Sept. 1907 15 Ches. & Ohio 4½% Coupons	337.50	
Oct. 1907 10 Peoria & Eastern 4% Coupons	200.00	
Nov 1907 10 Mo. Pacific 6% Coupons,	300.00	
Jan. 1908 10 Reading 4% Coupons	200.00	
Jan. 1908 6 Ky. Central 4% Coupons,	120.00	
Feb. 1908 10 Wabash 5% Coupons,	250.00	$8,142.67
		$9,876.39

Cash Disbursements from August, 1906.

Check Nos.	Date 1906		
66	Oct. 1	O. M. Carter, Aug. and Sept. accounts, order of court,	$300.00
67	Oct. 16	American Surety Co., bond premium,	112.50
68	Nov. 8	Richard H. Wyman, order of court Nov. 6, 1906, on account	500.00
69	Nov. 10	O. M. Carter, Oct. and Nov. accounts, order of court,	300.00
70	Nov. 10	National Safe Deposit Co., box rent to Nov. 9, 1907,	15.00
71	Dec. 10	Richard H. Wyman, order of court Nov. 6, balance,	819.55
	1907		
72	Jan. 4	O. M. Carter, Dec. and Jan. accounts, order of court,	300.00
73	Jan 21	Horace G. Stone, order of court Jan. 14, 1907,	2,500.00
74	Apr 5	O. M. Carter, Feb., March and April accounts, order of court,	450.00
75	May 14	O. M. Carter, May account, order of court,	150.00
76	June 6	O. M. Carter, June account, order of court,	150.00
77	July 22	O. M. Carter, July account, order of court,	150.00

78	Aug. 1	O. M. Carter, August account, order of court,	150.00	
79	Aug. 12	H. G. Stone, order of court Aug. 7, 1907,	1,500.00	
80	Sept. 4	O. M. Carter, Sept. account, order of court,	150.00	
81	Oct. 1	O. M. Carter, October account, order of court,	150.00	
82	Oct 1	American Surety Co., bond premium,	12.50	
83	Nov 1	O. M. Carter, Nov. account, order of court,	150.00	
84	Nov. 10	Nationa Safe Deposit Co., rent of box to Nov. 9, 1908,	15.00	
85	Dec 2	O. M. Carter, Dec. account, order of court,	150.00	
86	Dec 5	American Surety Co., bond premium,	100.00	
	1908			
87	Jan 2	O. M. Carter, order of court,	150.00	
88	Feb. 1	O. M. Carter, order of court,	150.00	$8,424.55
		Balance of cash on hand February 4th, 1908,		$1,451.84

Respectfully submitted,

MAX H. WHITNEY,
Receiver.

State of Illinois, }
County of Cook, } ss.

Max H. Whitney makes oath and says that the foregoing is a true and correct report of his cash receipts and cash disbursements in the above matter from the 1st day of August, 1906, to the 4th day of February, 1908, inclusive.

MAX H. WHITNEY.

Subscribed and sworn to before me this 4th day of February, A. D. 1908.

JOHN H. R. JAMAR,
Chief Deputy Clerk.

Endorsement: Filed Feb. 4, 1908. H. S. Stoddard, Clerk.

And on to wit: the 13th day of April, 1908, came the complainant by Marion Erwin, its solicitor, and filed in the clerk's office of said Court, a motion in the words and figures following to wit:

MOTION OF UNITED STATES AS TO ADJUSTMENT IN FINAL DECREE OF ADVANCES TO O. M. CARTER AND TO HIS COUNSEL.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

The United States of America
vs.
Oberlin M. Carter *et al.*
} Bill No. 25980, Auxiliary Bills, etc.

Motion.

Now comes the United States by Marion Erwin, Special Assistant to the Attorney General, and shows to the court that under the interlocutory orders and decrees of this court since the agreement of November 6, 1901, in said cause certain advances were made from the fund brought into court to the said O. M. Carter for personal expenses and in conduct of his defense for bills of printers, expert accountant, and allowances to his chief and other counsel by orders in which the court reserved until its final decree the adjustment of the same between the parties as their rights might appear, to wit:—

To O. M. Carter on account for personal expenses (under order of Feb. 13, 1905)	$7,800.00
To Gunthorpe-Warren Printing Company for printing for defense	
Under order of Sept. 5, 1905	977.60
" " " June 18, 1906	1,540.00
" " " Apr. 6, 1908	1,486.90
To Charles McPherson expert accountant for defense	
Under order of April 1908	1,580.73

To Horace G. Stone chief counsel for defense		
Under order Feb. 15, 1904	$6,000.00	
" " " 13, 1905	5,000.00	
" " Dec. 11, 1905	2,500.00	
Under order Jany. 14, 1907	2,500.00	
" " Aug. 7, 1907	1,500.00	17,500.00
To Horace G. Stone for local counsel of defense in other districts		5,000.00
		$35,885.23

The said amounts were advanced from the income and proceeds of securities which came into the hands of Max H. Whitney, receiver, from the securities which have been by decrees of this court held to belong to the United States, therefore the United States moves the court that in and by the final decree of this court the above amounts advanced to the said O. M. Carter or for his defense out of the fund brought into court, together with all additional sums if any, which the court may direct to be paid out for or on account of said defense shall be decreed to be a first charge upon the assets in court which have been or may be held to be the property of the said O. M. Carter and that all said assets shall be sold and the proceeds applied first to reimburse the fund in court belonging to the United States for said expenditures made from the fund belonging to the United States and that the United States be decreed to have a judgment against the said O. M. Carter for any deficiency.

THE UNITED STATES,
By MARION ERWIN,
Sp. Asst. to the Atty. Gen'l,
Compls. Solr.

Endorsement: Filed April 13, 1908. H. S. Stoddard, Clerk.

And on to wit: the 24th day of April, 1903, came the complainant by Marion Erwin, its attorney, and filed in the clerk's office of said Court exceptions to the report of W. M. Booth, master, in the words and figures following, to wit:

COMPLAINANT'S EXCEPTIONS TO REPORT OF WM. M. BOOTH, MASTER.

In the Circuit Court of the United States, for the Northern District of Illinois, Northern Division.

United States of America,
Complainant,
vs.
Oberlin M. Carter *et al.*,
Defendants.
} 25980.
In Equity, Bill, etc.

In Re Reference October 15, 1902 to the Honorable William M. Booth, Master in Chancery.

Exceptions to Master's Report.

And now comes the complainant, the United States of America, and excepts to the report of the Master, William M. Booth, on the reference made October 15, 1902, and filed on the 15th day of April, 1903, and for cause of exception says:

First Exception.

For that the said master, on page 24 of his finding, states:

"Another item in the account of I. Stanton Carter claimed as credit, is the following: 'Paid services I. Stanton Carter (estimated) $7,500.'

"The evidence discloses that this claim is based upon an agreement alleged to have been made with Captain Carter in October, 1899, by virtue of which I. Stanton Carter contributed his services for twenty-five months—until November 15, 1901—at a salary of $300 per month. * * *

"The master is of the opinion that the evidence of O. M. Carter and I. Stanton Carter is sufficient to establish that the agreement was for $300 per month. This salary could not, however, be properly charged up against this fund after the appointment of the receiver herein, and hence the allowance can only run until August 27, 1901, or say, from October 15, 1899, to September 1, 1901, being twenty-two and one-half months, which, at $300 per month, would amount to $6,750.

"The master is of the opinion that said I. Stanton Carter is entitled to a credit for salary for twenty-two and one-half months, at $300, $6,750."

And on page 33 of said report, stating the credits to which I. Stanton Carter is entitled, as against the assets traced into

his hands and for which he is accountable to the receiver, under the findings of the master the said master gives I. Stanton Carter credit for

"Salary, 22½ months, at $300, $6,750."

And said master carries said credit forward in the aggregate, on page 34 of said report. And likewise carries said credit forward in the consolidated account, in which he states the aggregate balance against I. S. and I. D. Carter, on page 57 of said report. Whereby the said master diminishes the amount for which said I. Stanton Carter is properly accountable to the receiver, by the said sum of $6,750.

And complainant assigns said findings as error, and says that the said master should have found:

"That under the terms of the order of reference of October 15, 1902, the master is required to find:

'What assets, or proceeds thereof, or reinvestments thereof, charged by the complainant to have been a part of the trust funds diverted by O. M. Carter, and in the possession, power or control of I. Stanton Carter and Lorenzo D. Carter on the date of notice to them of the appointment of Max H. Whitney, receiver, or since then coming into the hands of either of them, if any, is yet properly to be accounted for to the receiver, and yet to be turned over to the receiver by them, or either of them, respectively, under the orders of the court in the premises, and the agreement of November 6, 1901, approved by this court on that date,' etc.

That by the terms of the agreement of November 6, 1901, referred to, it is expressly provided as follows:

'Clause 2. That as to the assets claimed by the Government as assets into which it charges the funds entrusted to Oberlin M. Carter, as disbursing officer, was diverted, with the proceeds, income and reinvestments thereof, where the form of the investments have been changed, and which assets have been or may be hereafter traced in the possession, custody or control of said defendants, and have not heretofore been bona fide disposed of by them and therefore beyond their control, shall be forthwith by the said defendants turned over to the receiver appointed in this cause. But the court will determine whether the one, Kentucky Central, and one, Michigan Telephone bonds, charged in the bill to be reinvestments of said alleged trust fund, and which bonds are claimed by I. Stanton Carter, should be held by the receiver pending the litigation.'

'Clause 4. L. D. Carter and I. Stanton Carter will forth-

with dismiss their demurrers and file answers, disclaiming any personal interest in the aforesaid assets in controversy in this litigation; including the real estate on Eighth avenue, New York, and at Orange, New Jersey, except as to the two bonds claimed by I. Stanton Carter as above.' "

"That by the terms of said agreement it is immaterial whether there was a contract, valid or invalid, between I. Stanton Carter and Oberlin M. Carter, by which the latter agreed to pay the former a salary for his services, or not. Such salary could not be, under the terms of the agreement, set off against any of said assets traced into the hands of said I. Stanton Carter, as found by the master on the debit side of the account; as, under the agreement, he expressly disclaimed all personal interest in said assets claimed by the Government and traced into his hands.

"That to allow him to withhold such assets in his hands from the receiver, by setting off a salary credit against the same would be to violate an agreement which gives the defendants important and material rights and exemptions."

In support of this exception reference is made to the following testimony:

Agreement of November 6, 1901, made part of the order of reference, and which is a part of the record in the cause, showing its terms.

Reference is made to the testimony of I. Stanton Carter that he did not spend over $150 out of his salary for personal and family expenses. (Testimony before the master, October 24, 1902, page 141.)

Again, on December 2, 1902, he says he did not spend over $130 a month out of his salary, for his personal and family expenses. (Testimony before master, page 254.)

He further testified that his regular business was dentistry, and that he made on an average of from seven to nine dollars a day at that work. (Testimony before master, pages 256, 257.)

I. Stanton Carter testified, that he has practically no private property of his own. (Testimony before master, page 254.)

It is not an unreasonable presumption that he did spend for his private and family use the amount he claims to have spent, and that so much of it as he has so spent is out of his power to replace.

To that extent, to wit: twenty-three months, at $150 per

month, $3,450, we concede that I. Stanton Carter would be entitled to credit, under the second clause of the agreement of November 6, 1901, as being so much of the assets actually disposed of by him prior to the receivership, and, therefore, beyond his control.

This concession does not depend on the validity of the agreement for salary, or the legality of the payment; but simply upon the fact that the money had been paid out and consumed prior to the receivership, and, therefore, it is impossible to make him replace it.

But this does not authorize him to set off the balance of the salary alleged to be due him by O. M. Carter against the remaining assets admittedly traced into his hands, and not accounted for, in the face of his positive disclaimer of any personal interest in said assets, in the agreement of November 6, 1901.

Reference is made also to the following documentary evidence as an estoppel against I. Stanton Carter from claiming that the one, Kentucky Central, and one, Michigan Telephone bond, were bought with said salary claimed by him from said trust fund, to wit: the report of the receiver, in the record, containing the response made September 20, 1901, of I. Stanton Carter to the demand of the receiver for all the said O. M. Carter assets in his hands, claimed in the bill; and to the written reply of I. Stanton Carter thereto, as follows:

"None of the property mentioned in your demand is either in my possession or under my control, except one bond of the Michigan Telephone Company, for $1,000, and one bond of the Kentucky Central Railway for $1,000. These two bonds are my own individual property, purchased entirely with my own private funds, and now belong, and have always belonged to me, solely and individually."

It is in reference to that written claim of I. Stanton Carter, that the clause in the agreement of November 6, 1901, refers the question as to the custody by the receiver of those two bonds, for the decision of the court.

Reference is made to the following evidence, disproving I. Stanton Carter's claim that these two bonds were purchased with his own private funds:

"Pf. Exhibit 8, admitted in evidence, page 5, affidavit and account of I. S. Carter with N. W. Harris & Company shows the purchase of these two bonds for $2,017.01, on March 11, 1901, by a deposit of currency for that amount by I. S. Carter.

Pf. Exhibits 14 and 15, account of I. S. Carter with Union Trust Company of Chicago, which account contained the trust funds received by him from J. H. Paul and Df. Exhibit 4, stub-check book for said bank shows that I. S. Carter withdrew $1,700 of said fund from that company on March 11, 1901.

I. S. Carter testified on cross-examination, page 98:

'Q. Harris' account shows that on March 11th, you paid them $2,017.01; on the same date your stub-book shows that you drew out the $1,700 from the Union Trust Company, and that lacked something like $300 of making up the full amount paid to Harris. You must have got the additional $300 from some other source, did you not?

A. I surely did.

Q. Where did you get the other $300 from?

A. I don't know now. I might have got it out of my pocket, and might have got it out of the vault.'

"Page 264, I. S. Carter testified:

"Q. When you had those safety deposit boxes in Chicago here, did you have any other place to keep these large sums of cash which you got from time to time?

A. No, sir.

Q. Always kept them in those boxes?

A. Yes, sir.

Q. Well, you had two boxes at one time, the one in the National Safety Deposit Company, in the First National Bank Building, was in the name of Stanton Carter, was it not?

A. Yes, sir.

Q. And the one in the Columbus Memorial Building, you kept your box there in the name of Isaac Carter, did you not?

A. Yes, sir.'

Page 96, I. S. Carter testified, that from November 23, 1900, he carried about $46,356.25 in these vaults, until he contributed $14,884.35 from it towards the purchase of the twenty-one Kentucky Central bonds, February 13, 1901.

Page 139:

'Q. Did you keep in the safety deposit vaults at any time any other money than was derived from those securities?

A. No, sir.' "

This evidence establishes the fact that the two bonds purchased March 11, 1901, were purchased with proceeds of the trust funds. They are, therefore, a reinvestment of the trust

funds, and as such, part of the assets which the court directed should be turned over to the receiver. It is true that he is not estopped by the agreement of November 6, 1901, for claiming a right to these bonds as a payment on account of salary due him by O. M. Carter, but he did not set up such a claim in the agreement of November 6, 1901, nor in his pleadings and answers, filed prior thereto, and his final right to a salary as against the claims of the United States and against the receiver in those bonds, can only be determined on final decree on the merits of the main cause, and after he has accounted for the balance of cash still in his hands. See Post, p. 27.

Second Exception.

For that the master in his findings stated as follows:

"Another item in I. Stanton Carter's account is, 'Paid expenses I. Stanton Carter (estimated), $8,000.'

"To prove this item defendant, I. Stanton Carter, offered almost no evidence, except his own unsupported testimony, stating substantially as follows:

"He had no list of those expenses, nor the date when they were paid out, nor any memorandum of the different trips that he took when he incurred travelling expenses. He thinks New York, Washington, Leavenworth and Savannah were the only places he went. The only hotels he stopped at in New York were the Hoffman House and the New Amsterdam. Thinks he only made three or four trips to Washington, only stopped at one hotel, and thinks that hotel was the Raleigh. Was at Savannah twice before May 23, 1900, and once afterwards, and stopped at the De Soto Hotel. He took trips to Leavenworth to see Captain Carter, and saw him on every occasion except one, which was on Sunday when visitors were not admitted. He testified that he was on the road nearly all the time, traveling or moving back and forth for Captain Carter, and was scarcely home at all. Two letters from the Western Passenger Association to I. S. Carter were introduced in evidence showing that in March and September, 1901, he returned two mileage books good on roads west of Chicago, out of which mileage to the extent of 23,575 miles had been used, at two cents per mile, or a total of $471.50.

"In opposition to this claim for $8,000, the complainant showed by affidavits from clerks and proprietors of the various hotels named (admitted in evidence by agreement), that

during the period in question said I. Stanton Carter stopped at the said hotels only for the number of times and the total number of days, as follows:

New Amsterdam, New York, 6 times, 30 days;
Hoffman House, New York, 6 times, 34 days;
The Raleigh, Washington, 1 time, 1 day;
De Soto Hotel, Savannah, 2 times, 4 days.

"And by the evidence of E. I. Johnson that a liberal allowance for all expenses on such trips including railroad fares, meals while en route, sleeping car fares and tips to porters, hotel bills and transfers for passenger and baggage would be $1,477.25.

"Complainant also showed by the records of the military prison, at Leavenworth, that during the period in question and up to October 7, 1902, said I. Stanton Carter visited that institution eighteen times; and by the testimony of E. I. Johnson that allowing for two days' stop at a hotel for sixteen of these visits, and three days' stop at two of them, and also allowing for two days' stop on the Sunday visit above referred to, a liberal allowance for all expenses of all such trips would be $950.08. And that a like liberal allowance for all such trips prior to September 1, 1901, would be $703.48. That a like liberal allowance for one such trip on September 14, 1901, would be $49.32. And a like liberal allowance for all trips taken after November 6, 1901 (four in all), would be $197.28.

"I. Stanton Carter also claimed to have made a trip down to 'Mexico or New Mexico,' and claims to have stayed there two weeks. If so, it seems to have made very little impression on his mind, as he could not definitely name the persons he saw, or the hotels he stopped at, except that he believed he stopped at the Palace Hotel, at 'Careus' or 'Cereus,' which place does not appear in the atlas or the United States Postal Guide.

"Complainant is willing to concede the following credits on this claim of $8,000:

New York and Washington trips	$1,276.25
Savannah trips	201.00
Leavenworth trips, prior to Sept. 1, 1901	703.48
Total	$2,180.73

"Inasmuch as general experience proves that the actual expenses of traveling usually amount to about double what

is estimated in advance as a liberal allowance, and in view of the fact that the defendant, I. S. Carter, may have made the alleged New Mexico trip, and possibly even others, the amster would recommend that he be given credit, on this claim for expenses paid prior to September 1, 1901, for $4,000, and that he be allowed credit for the trip taken September 14, 1901, for $60, and for the four trips after November 6, 1901, $240."

And complainant assigns said finding of the master as error, in this; that the master having found that the testimony showed that $2,180.73 was a liberal allowance for the disbursements on the trips actually proved to have been made by I. Stanton Carter, the master was not justified in holding that:

"As general experience proves that the actual expenses of traveling usually amount to about double what is estimated in advance as a liberal allowance, and in view of the fact that the defendant, I. S. Carter, may have made the alleged New Mexico trip, and possibly even others, the master would recommend that he be given credit on this claim for expenses paid prior to September 1, 1901, for $4,000, and that he be allowed credit on the trip taken September 14, 1901, for $60, and the four trips after November 6, 1901, for $240."

And that said doubling of the allowance for expenses beyond the proof, was without evidence to support it, and contrary to law.

Whereas, the said master should have found:

"That the said I. Stanton Carter did not produce or have in evidence any list of said expenses, nor vouchers therefor, nor was he able to state the dates when the several amounts were paid out, nor to whom the same were paid, nor any memorandum of the different trips that he took on which such expenses were incurred, showing the dates when the trips were made, the routes traveled, or other particulars.

"That said I. Stanton Carter testified, when he testified first relative to these items, on October 24, 1902, that the trips he made were only to New York, Washington, Leavenworth and Savannah. That the only hotels he stopped at in New York were the Hoffman House and the New Amsterdam Hotel; and the only hotel in Washington he stopped at was the Raleigh; and the only hotel in Savannah, The De Soto on two trips. And that on every trip he made to Leavenworth, Kansas, he visited Captain O. M. Carter in the penitentiary, except one trip which was on Sunday.

"That affidavits from the hotel men, and extracts from the records of said hotels, introduced by complainant and admitted in evidence by agreement, showed just when he was at the hotels referred to, and how long he stayed each time. And the affidavit from the keeper of the penitentiary at Leavenworth, admitted in evidence by agreement, showed the number of times he visited O. M. Carter in the penitentiary. And that the testimony of Mr. Edward I. Johnson, who had experience in traveling over the same routes, and his calculations of said expenses liberally allowed, made up from the railroad fares, sleeping car fares, etc., and a liberal hotel allowance, showed that the following would be a most liberal allowance for expenses of the trips proven to have been made, including an extra trip claimed by I. Stanton Carter to have been made to Leavenworth when he did not see Captain O. M. Carter, and of which there is no confirmatory evidence:

New York and Washington trips	$1,276.25
Two Savannah trips	210.00
Leavenworth trips, prior to Sept. 1, 1901	703.48
Total to September 1, 1901	$2,180.73
Leavenworth trip, Sept. 14, 1901	49.32
Leavenworth trips, after Nov. 6, 1901	197.28"

In support of the above exception reference is made to the following testimony:

The testimony of I. Stanton Carter, October 24, 1902, page 112, to the effect that the only trips he made were to New York, Washington, Leavenworth and Savannah. On pages 112 and 116, with the correction, page 198, of the testimony before the master, that the only hotels he stopped at in New York were the Hoffman House and the New Amsterdam. To his testimony, page 117, that the hotel he stopped at in Washington was the Raleigh; his testimony, page 118, that he stopped at the De Soto Hotel, in Savannah, on two trips. To his testimony, page 119, that he saw Captain Carter in the penitentiary on every trip he made to Leavenworth, except one. To his testimony, on page 119, that the traveling expenses which he claimed in the account were for the trips that he made to New York, Washington, Leavenworth and Savannah only.

Reference is made to plaintiff's Exhibits 20, 21, 22 and 23, being the affidavits of the hotel men and keeper of the penitentiary, showing just what trips were made. And the consolidated statement, plaintiff's Exhibit 32, showing what

would be a liberal allowance for the trips shown to have been made. And the testimony of Edward I. Johnson before the master, pages 232 and 239, in support of said exhibits.

When brought back to the stand December 2, 1902, I. Stanton Carter testified before the master, page 253: "I think I did stop at the St. James, I think, in Washington."

And again he testified when brought back to the stand, on December 2, 1902, page 260, that he made a trip down in Mexico, which he had forgotten to mention. When pressed to mention places visited, he mentions "Cereus" or "Carius," and Albuquerque; and being asked if he meant New Mexico, he replied, yes. Page 262, he testified, that he stayed about two weeks there. He could not mention the names of the hotels at which he stopped, or whom he saw about the business; page 261, he testified, that his brother had no mining interests there at that time; that he made the trip to see about investments—about a copper mine—but accomplished nothing.

The names he attempts to mention had all been called over in L. D. Carter's testimony previously given. L. D. Carter had testified before the master, on page 26, of the Mexico trip made by him. Pages 182, 183, of a place called "Carrillis" (intended for Cerrillis), near Albuquerque, where L. D. Carter claims to have made investments. L. D. Carter had also testified, page 163, of having paid $500 to one, Stephens, on trip to Albuquerque, Las Vegas, and one place in New Mexico, July 12, 1900. This is the trip on which L. D. Carter claims to have made the investments in the mines at or near Albuquerque.

L. D. Carter's entry on memorandum book, testimony before master, page 163, is: "Paid J. S. Short for services, $200, rendered up to and including November 15, 1900." L. D. Carter testified, page 186: "Short was the foreman of the gang down near Albuquerque, and then I had him down to Lordsburg, and he was with us quite a while."

I. S. Carter testified, as above, that his "trip to New Mexico was for the purpose of making investments, and that his brother had none there when he made the trip." It muust have been, therefore, if made at all, prior to July 12, 1900, and as he claims to have stayed there two weeks, he must have left Chicago for the trip prior to June 28, 1900. But plaintiff's Exhibit 20 shows he was in New York June 28 and 29, 1900; and plaintiff's Exhibits 14 and 15, Union Trust Company account, shows he opened his bank account (plaintiff's

Exhibit 43, offered in evidence, page 199), with that bank in Chicago, on June 12, 1900, and made deposits thereon June 12, 16 and 22, 1900.

Plaintiff's Exhibit 23 shows, I. S. Carter at Leavenworth, June 1, 1900, with F. P. Blair. Between June 1 and 12, 1900, he could not have made the trip from Leavenworth to Albuquerque and Carrillis and returned to Chicago, and stayed two weeks in New Mexico. The Lewis letter, number 6, in evidence, June 5, 1900, to I. S. Carter, acknowledges a telegram from I. S. Carter, also between June 1 and 12.

So, if he made the trip to New Mexico and stayed two weeks, as he claims it, it must have been prior to June 1, 1900.

Plaintiff's Exhibit 18, Blair's affidavit and account with check attached, shows I. S. Carter received $5,750 on May 29, 1900, in Chicago, from proceeds of bonds sold; which bonds plaintiff's Exhibit 3 shows I. S. Carter personally had received from J. H. Paul, in New York, May 23, 1900. So that the evidence shows that if the trip to New Mexico, by I. S. Carter, was made at all, it was made prior to his having received or sold any of the securities from J. H. Paul. So that I. S. Carter's statement that he was going out there to make investments, is utterly discredited, aside from the fact that he offers no competent proof to support the claim.

I. Stanton Carter not a Credible Witness.

"Credit of a witness may be impeached either by cross-examination subject to the rule already mentioned, or by evidence that he has before done or said that which is inconsistent with his evidence on the trial; or, lastly, by contrary evidence as to the facts themselves."

Starkie on Evidence, star page 237.

Mr. Justice Story states the rule as follows:

"Where the party speaks to a fact in which he cannot be presumed liable to mistake, as in relation to the country of his birth, or his being in a vessel on a particular voyage, or living in a particular place, if the fact turn out otherwise, it is extremely difficult to exempt him from the charge of deliberate falsehood; and courts of justice under such circumstances are bound, upon principles or law, and morality and justice to apply the maxim falsus in uno, falsus in omnibus."

The Santissima Trinidad, etc., 7th Wheaton, 339.

Even where a party has pleaded a certain state of facts, which must have been at the time of pleading within their personal knowledge, they will not be allowed to amend their pleadings, and set up facts totally at variance with their origi-

nal allegations. They will not be allowed to contest the facts previously averred.

Henderson v. Louisville & Nashville R. R., 123 U. S., 61.

Contradictions of I. Stanton Carter.

In answer to demands of receiver for the assets, in controversy, I. S. Carter filed his written denial that he had any of these assets, except two bonds claimed as his own. (See receiver's report in evidence on which rule for contempt of September 23, 1901, was based.) He made the same denial in his answer to the rule, filed October 21, 1901. After we face him in court with his receipt to J. H. Paul, for $400,000 of these assets, he admits possession and gives up securities in person to amount of $70,000.00. See receiver's report, filed April 14, 1903.

Under item 9, claim of credit of I. Stanton Carter as follows:

"Claim paid Captain Carter, estimated $10,000."

I. Stanton Carter testified under cross-examination on page 102, as follows:

"Q. Now, the next item that you claim credit for is, 'Paid Captain Carter, estimated, $10,000.' When was it that you claim you paid Captain Carter that $10,000?

A. That was on Governor's Island.

Q. At Governor's Island?

A. Yes, sir.

Q. The whole of the amount of $10,000 that you paid him, all that credit, you claim to have paid him at Governor's Island?

A. I think I gave it all to him there.

Q. Where did you get the money to pay that over to Captain Carter?

A. I got some of it from Mr. Paul."

It is impossible that I. Stanton Carter could have paid out any such amount of money to Captain Carter, and not know the time and place of its payment. The arrest of his brother and imprisonment at Governor's Island was a notable event; the delivery of such a sum of money to Captain Carter was a notable event.

I. Stanton Carter's attention was then called (page 103 of testimony), to the fact that O. M. Carter was taken from Governor's Island and put in the penitentiary at Leavenworth on April 27, 1900. (Plaintiff's Exhibit 23.)

Also to the fact that the securities for which I. Stanton

Carter was accounting were not received by him from Paul until May 23, 1900. (Plaintiff's Exhibit 3.)

And that the total other items received by him prior to May 1, 1900 (see debit side of account item 9), and for which he charges himself amount to about $2,750. He then admits (testimony, pages 103, 104), that it was impossible for him to have paid the $10,000 out of the moneys for which he was accounting. So palpable was this a false claim of credit against the fund for which I. Stanton Carter was accounting that his counsel (page 110 of testimony), admits that the claim of credit ought to be abandoned, but still contended for it as against the $2,750 received by I. Stanton Carter, prior to May 1, 1900. Although he claimed credits for other items paid out by him prior to May 1, 1900, for more than enough to have absorbed the $2,750.

There was absolutely no proof put in to verify this $10,000 claim of credit, it was affirmatively disproved, and the master so found.

Again,

Under Debit Item 5, claimed paid A. J. Rose $5,000.

I. Stanton Carter endeavored to claim that he paid the Kellogg & Rose note in cash $5,000, and that this was in addition to $4,500 in coupons, which he delivered them, for which we gave him credit as delivered to Kellogg & Rose. (See his testimony, pages 138, 79, 80.)

At this very time he had in his possession, but held back, Kellogg & Rose's receipt, which showed that the note had been paid by $4,500 in coupons and $500 in cash. It was not until after the complainant went to New York and proposed to take affidavits and extracts from the letter-books, and which was there taken, that the receipt was produced, after Rose produced his copy of the receipt, and which showed conclusively that the payment had been made by I. Stanton Carter with the $4,500 in coupons, and $500 in cash. (See plaintiff's Exhibit 27, affidavit of Rose and statement from books of Kellogg & Rose.)

Again,

Under Item 10, I. Stanton Carter's Claim of Credit.

"Claim paid as per order of Captain Carter, estimated, $10,000."

I. Stanton Carter, on direct examination testified as to this, pages 56 and 57, that he paid $100 or $150 to a woman, and gave $8,500 to Mr. Rose for the woman.

On page 158 he testified, that he gave the money to Rose in the City, or over at Governor's Island.

Plaintiff's counsel, on page 103, called I. Stanton Carter's attention to the fact that it was impossible for him to have paid any of these large sums of money to the woman while O. M. Carter was at Governor's Island, by reason of the fact that Carter left Governor's Island on April 27, 1900, and I. Stanton Carter did not get the securities, for which he was accounting, into his hands until May 23, 1900. I. Stanton Carter then changed his testimony as to this under cross-examination, on page 106, and said that he believed that he paid the money to Rose for the woman when Carter was at Leavenworth, and on page 109, that he got the money out of the safety deposit vault in Chicago, in which he kept the proceeds of securities sold by him from those received by him from Paul, on May 23, 1900. The above testimony was given before the master on October 23, 1902; on November 6, 1902, the testimony of Mr. Rose was taken by Mr. Stone and Government's counsel by affidavit in New York, and which was admitted in evidence by agreement, page 234. Plaintiff's Exhibit 27, Rose's affidavit and transcript from Kellogg & Rose's books totally disproves this claim.

The other evidence, on which the master bases his finding that the $10,000 was not paid to the woman at all, shows conclusively that this was an absolutely false claim.

The letters of Miss Lewis in evidence, and other evidence show conclusively that instead of I. Stanton Carter paying her any money, that the sums that were paid her were paid her directly by J. H. Paul from a different fund which he had on hand, to get her to go to Europe and stay away while the Greene and Gaynor hearing was going on in New York, and that she was then set adrift without any provisions for her, until in despair, she attempted to commit suicide. These were all claims of credits for very large amounts.

It was impossible that I. Stanton Carter could have made them by mistake of fact. They show either that they were false and perverted statements known by him to be utterly untrue at the time they were made, or else that his mind is so weak and unreliable that his testimony cannot be accepted in either event.

Again,

The Claim by him of Traveling Expenses to Mexico and New Mexico, as hereinbefore shown, is Disproved.

Again,

His claim of being away from Chicago on his brother's business, the biggest portion of his time, was shown to be utterly untrue by the evidence, and as found by the master. Under cross-examination it was reduced to a few trips, the time of which is shown by the positive evidence from the hotels at which he stopped.

The said finding of the master contravenes the following rules applicable to accounting and references.

The rule is, that no party is allowed in an accounting to clear himself by his own testimony, but he must produce vouchers, and if the other party objects, he must produce

"The affidavit or oral evidence of the person who received the money is required; and if this cannot be had, then proof be given of his signature to the voucher."

2nd Daniel's Chancery Practice, star page 1227, 6th Ed.

Harding v. Handy, 11 Wheat., 103-127.

There are certain exceptions to the general rule, but when the rule is to be departed from it must be provided for by the order of court making the reference. As stated by Mr. Daniel:

"It is to be observed, however, that it is not for the master to decide in such cases as to the propriety of departing from the ordinary course of proceeding."

2nd Daniel's Chancery Practice, star page 1231, 6th Ed.

Even where the amount to be accounted for does not exceed forty shillings, the party is not allowed to discharge himself by his own oath, unless he be creditable and uncontradicted, and then he must mention to whom paid, for what and when, and must swear positively to the fact, and not as to his belief only, and the whole of the item so established must not exceed 100 pounds.

2nd Daniel's Chancery Practice, star page 1228.

Remsen v. Remsen, 2 John. Ch., 501 (N. Y.).

Goodner v. Browning, 9 Hump. (Tenn.), 783.

"It is for the party claiming to be entitled, to establish just what is the amount he is properly entitled to, and it is not made the duty of the court, or its officers to arbitrarily guess at the amount."

Spalding v. Mason, 161 U. S., 394, 392.

And complainant excepts to the finding by said master as aforesaid of $60 expenditure by said I. Stanton Carter for

the expenses of trip September 14, 1901, and the finding of an expenditure of $240 for four trips after November 6, 1901; the testimony being, as hereinbefore set forth, that a reasonable expenditure for the Leavenworth trip of September 14, 1901, would be $49.32, and for the four trips after November 6, 1901, $197.28; there being absolutely no testimony to support the increase of said alowance over said sums, which were testified to be liberal allowances for such trips, and an inspection of Exhibit 32, taken in connection with the testimony of Edward I. Johnson, page 232 and 239 of testimony reported by the master, will show that the same were liberal estimates and assigns the same as error.

Complainant excepts to the carrying forward of said credit of $4,000 for traveling expenses into the statement of balances, page 34 of the master's report, and assigns the same as error.

And excepts to the carrying forward of the balance, so obtained into the consolidated account made by the master on page 57; and assigns the same as error.

Note. The following items which I. Stanton Carter made proof of under the head of the $8,000 estimated expenses, and for which he did not claim credit in his statement rendered otherwise than under this item, were allowed by the master in the credits given him in stating the amount, page 33 of the master's report, although in stating the account the master simply gives the credit without stating under which item the claim for credit was made, viz.:

"Paid account of Orange, N. J., property	$ 620.50
Paid interest account of 8th avenue property	484.48
Paid storage	90.00
Paid commissions of Bragg	10.00
Paid for printing	2,150.00
Paid expenses of Blair November 25, 1899, and for revenue stamps	401.50"
Aggregating	$3,756.48

These items added to the $4,000 allowed for traveling expenses to I. S. Carter by the master, makes an allowance of $7,756.48 on the claim of $8,000 made under general heading of expenses.

Third Exception.

For that the said master in stating the final account of I. Stanton Carter, on page 33 of his said report, committed error in this, that he gives the said I. Stanton Carter credit, as against the fund traced into his hands as found by the master, for salary twenty-two and one-half months, at $300, $6,750.

Whereas, the said I. Stanton Carter should not be given credit for salary at all, as shown by complainant's first exception, but should be credited only for the amount which he actually used for account of salary on account of personal and family expenses, which he could not now replace, $3,450.

And in this, that he gives the said I. Stanton Carter credit for traveling expenses to September 1, 1901, $4,000.

Whereas, as shown by complainant's second exception, he should not be credited for traveling expenses to September 1, 1901, but with $2,180.73.

And in this, that said master gives the said I. Stanton Carter credit in said final account for Leavenworth trip September 14, 1901, $60, and Leavenworth trips since November 6, 1901, $240.

Whereas, the reasonable expenses and costs for said trips, as shown by complainant's second exception, are:

Trip September 14, 1901	$ 49.32
And Leavenworth trips since Nov. 6, 1901	197.28

And in this, that on the next page said master carries forward said errors in the original account, into the statement of balances on page 34 of said master's report.

And whereas, said master should have stated the credit side of I. Stanton Carter's account on pages 33 and 34 of his report as follows:

I. Stanton Carter.

	Credit.
Paid F. P. Blair	$ 6,200.00
Paid F. P. Blair	5,000.00
Paid F. P. Blair by deduction from Mtge. loan	2,005.27
Paid F. P. Blair and for revenue stamps	401.50
Paid A. J. Rose	5,000.00
Paid Lucinda M. Carter	2,581.72
Paid for printing	2,150.00
Paid for life insurance	453.00
Paid for commission to Bragg	10.00

Paid storage	90.00
Paid on account Orange, N. J., property	620.50
Paid interest, etc., on account 8th Ave. property	484.48
T. M. Cunningham, notes	10,275.00
Colehour, note	11,000.00
Beirne Gordon, notes	600.00
Cash turned over to receiver	770.40
Contributed toward purchase 21 Ky. Cent. bonds	14.884.35
Money paid to L. D. Carter	7,000.00
Money paid D. P. Carter	354.00
Money paid O. M. Carter	150.00
Salary, 22½ months, at $300, of which expended	3,450.00
Traveling expenses prior to Sept. 1, 1901	2,180.73
Amount paid C. L. Banks	100.00
Total credits to Sept. 1, 1901	$75,760.95
Paid H. G. Stone, Sept. 23, 1901 $1,000.00	
Exp. Leavenworth trip Sept. 14, 1901 49.32	1,049.32
Payments since November 6th, 1901:	
Four Leavenworth trips	$ 197.28

STATEMENT OF BALANCES,

I. S. Carter.

Total of debit items	$95,651.41
Total credits to Sept. 1, 1901	75,760.95
Balance in I. S. Carter's hands Sept. 1, 1901	19,890.46
Payments between Sept. 1 and Nov. 6, 1901	1,049.32
Balance of assets in hands of I. S. Carter Nov. 6, 1901, which have not yet been turned over to the receiver	18,841.14
Payments since Nov. 6, 1901, not to the receiver	197.28
Balance still in I. S. Carter's hands to Dec. 2, 1902, at the time of closing testimony	18,643.86

In addition to the above, the defendant, I. Stanton Carter, should account for all coupons on said Michigan Telephone Company bond and said Kentucky Central Railroad Company bond accruing since the date of their purchase, March 11, 1901.

Fourth Exception.

For that the said master, in passing upon the credits claimed by L. D. Carter against the fund traced into his hands, finds, on page 39 of his said report, as follows:

"The next item is, 'Paid J. H. Winkler, $1,000.'

"L. D. Carter testified that Winkler was an attorney at Oakland, Illinois, who had rendered services for him on account of Captain Carter, and that he had paid him the above amount as he and Winkler estimated it. He produced canceled checks showing the payment of $325, and a receipt for $1,000, dated September 1. 1901 but which was actually signed October 23, 1902, and which he testified was for amounts paid to Winkler prior to September 1, 1901, although the evidence showed a payment of $50 was made October 31, 1901.

"The master is of opinion that this item is sufficiently proven, and should be allowed for $1,000."

Complainant excepts to said finding, and assigns the same as error. Whereas, the said master should have found as follows:

"There was no positive competent evidence of any payments made to J. H. Winkler by the said L. D. Carter except as follows:

"Complainant's Exhibit 27, check, Jan. 22, 1901	$ 50.00
Testimony, page 158, check, November 9, 1900	45.00
Testimony, page 158, check, January 2, 1901	45.00
Testimony, page 158, check, February 6, 1901	50.00
Testimony, page 158, check, March 22, 1901	65.00
Testimony, page 158, check, May 2 1901	20.00
Testimony, page 158, check, October 31, 1901	50.00
Total	$325.00

That said L. D. Carter is not entitled to credit for any payments to the said J. H. Winkler in excess of said sum of $325."

In support of the above exception reference is made to the following evidence:

L. D. Carter testified before the master, page 22, that Winkler was his local attorney at Oakland.

On October 21, 1902, L. D. Carter testified, page 41, that he had paid Winkler said sum of $1,000 by a check which he could produce.

On October 24, 1902, he came back to the stand and testified, page 157, and produced two receipts from J. H. Wink-

ler, as follows: Defendant's Exhibit 28, receipt dated September 1, 1901, J. H. Winkler to L. D. Carter, for amount paid for expenses, $1,000. Defendant's Exhibit 29, receipt, dated September 1, 1901, J. H. Winkler to L. D. Carter, for amount paid for expenses, $100, and for expenses paid by L. D. Carter, $100.

On cross-examination, page 159, L. D. Carter testified that the receipts were written out and signed by J. H. Winkler on the day before he, L. D. Carter, testified; that is, October 23, 1902,—over a year after it purports to have been written.

On page 157, L. D. Carter testified that the amounts were not paid to Winkler on the dates indicated by the receipts; that it had been paid previous to that, at various times. That he and Winkler had figured it up, $1,000 for services, "probably before that, and probably that day."

Although Winkler was within reach of the process of the court, and L. D. Carter's own attorney, he failed to corroborate his claim of payment by any testimony from Winkler, or to produce his affidavit, even, in proof of payment.

What part of the $1,000 was paid on the date the receipt was written out, October 22, 1902, if paid, is not stated. If the $675 in excess of the $325 was paid at that time, it was a breach of the order of the court directing L. D. Carter to turn over these assets to the receiver, and in direct violation of the agreement of November 6, 1901.

The receipts were objected to by complainant's attorney, (Rec., 159, 160), because they were not given contemporaneously with the transactions, and were papers evidently prepared for use as testimony, and not supported by affidavit of Mr. Winkler even. And the suggestion was then made that if a statement were made by Mr. Winkler, showing the dates of the payments by him and verified by affidavit, it would be admitted in evidence. To this time the payments stand unsupported. Such receipts are not evidence.

Jordon v. Wilkins, 3 Wash., C. C., 110, Fed. Cases, Vol. 3, No. 7527; Receipts, 19 Ency. Law, p. 1128.

The master should not have allowed credit but for the $275 paid out prior to September 1, 1901, the date of notice of the appointment of the receiver, and the $50 paid out October 31, 1901, should be stated as a payment made after that day, which is to be dealt with, under the order of reference, differently.

Fifth Exception.

For that the said master, in passing upon the credits claimed by L. D. Carter against the fund traced into his hands, in his report, page 41, found as follows:

"The next item is, 'Paid J. H. Winkler 4 trips to Chicago, $200.'

"L. D. Carter testified that he paid this amount. His testimony was supported by Winkler's receipt dated September 1, 1901, although actually signed October 23, 1902. The master is of the opinion that this item is sufficiently proven and should be allowed for $200."

And complainant assigns said finding as error, and says that the said master should have found:

"That there was no testimony to support said payment other than the uncorroborated testimony of L. D. Carter. That the receipt of J. H. Winkler, dated September 1, 1901, purporting to be from J. H. Winkler to L. D. Carter, was not actually written out and given to said L. D. Carter until October 23, 1902, while the case was on trial before the master. And that there was no proof by affidavit from Winkler, or other testimony save that of L. D. Carter, that such payment was ever made.

That said receipts were objected to by complainant's attorney because not proved, and because they were statements, not under oath, fixed up after the case was on trial and because the evidence tends strongly to show that the said expenses were actually paid to Winkler by the checks for which L. D. Carter takes credit under the $1,000 item last above excepted to."

In support of this exception reference is made to the evidence under said last above exception, and also to the following:

L. D. Carter testified before the master, page 25, as follows:

"Q. The next item is, J. H. Winkler, 4 trips to Chicago, $200. A. He charged $50 a trip.

Q. You paid that? A. Yes, sir."

The times when Winkler made those trips is indicated by the evidence, February 8 and 13, 1901, when the deposit was made with N. W. Harris, and the purchase of the twenty-one Kentucky Central bonds was made. (Testimony of L. D. Carter, page 33.)

L. D. Carter gave Winkler check, February 6, 1901, for $50, and March 27, 1901, for $65. The railroad fare from

Oakland to Chicago is only $4.83. The checks for which credit is given under the $1,000 item shows that these trips were paid for by those checks.

Sixth Exception.

For that the said master, in passing upon the claims of credit of L. D. Carter against the fund traced into his hands, on page 48 of his said report, states as follows:

"The next item is 'Personal expense, $5,000.'

"As to this item there is no evidence to support it excepting the testimony of L. D. Carter and some entries from the pencil memorandum books above mentioned.

"As to his Washington and New York trips, he undertook to name the various hotels at which he stopped, naming the Dewey, the United States, Shoreham, Riggs and Ebbett. Complainant's evidence established that there was no United States hotel in Washington; that L. D. Carter did not stop at either the Shoreham, the Riggs or the Ebbett during the period in question. He claimed to have stopped at various boarding houses also, but was unable to name any of them. Complainant's evidence also showed that L. D. Carter did stop at the Dewey Hotel on the following days: November 29, to December 4, 1900, December 19 to December 22, 1900, January 16 to 18, February 19 to 21, and 24 to 25, and 26 to 27, 1901; and that his total hotel bills for said days were $76.15.

"L. D. Carter testified that he made three, four or five trips from New York to Washington, and complainant's evidence shows that he was at the Hoffman House, New York, August 25 to 29, 1900.

"Complainant's witness, E. I. Johnson, testified as to what are reasonable expenses for railroad fares, hotel bills and incidental expenses of all kinds, and on the basis of this testimony complainant is willing to concede the following amounts:

Expenses, Washington and New York trips proven	$ 618.55
Expenses for 4 extra New York trips	154.00
Expenses, two Savannah trips (if made)	169.80
Expenses, Leavenworth trips prior to September 1, 1901	673.02
Total	$1,615.37"

And thereupon the said master found as follows:

"As to this entire claim of credit for $5,000 personal expenses, the master finds that there is no proper proof of any portion of it on the part of the defendant, but the complainant's evidence shows that there must have been such expenses, and to a considerable amount. Acting upon the assumption that traveling expenses usually largely overrun any estimate made in advance, the master thinks that $3,000 would be a liberal allowance, and recommends that L. D. Carter be allowed a credit for his personal expenses under this item for $3,000."

And complainant assigns said finding as error, and says that the said master should have found:

"That $1,445.57 was more than a liberal allowance for the trips actually proven, and that there is no competent evidence whatever to support any allowance for said expenses beyond the said sum of $1,445.57, expended up to September 1, 1901."

In support of this exception reference is made to Complainant's Exhibit 33, in connection with the testimony of E. I. Johnson as to railroad fares, etc.; Record pages 232 and 239, showing that a very liberal estimate for the traveling and personal expenses of L. D. Carter in making these trips would be:

Leavenworth trips to September 1, 1901	$ 673.02
Chicago, Washington and New York trips	618.55
Washington to New York trips, to September 1, 1901	154.00
Total to September 1, 1901	$1,445.57
Leavenworth trips after September 1, and prior to November 6, 1901	$ 54.46
Leavenworth trips after November 6, 1901	163.38

The master finds, as the evidence shows, that the two Savannah trips claimed by L. D. Carter, were not made, certainly not at the time he claims to have made them, and there is no evidence in corroboration offered.

Seventh Exception.

For that the said master in reporting on the claims for credit made by L. D. Carter against the fund traced into his hands, on page 52 of said master's report, states and finds as follows:

"The final item on L. D. Carter's account is, 'Paid myself salary for eighteen months, $15,000.'

"This claim is made under a written contract between I. Stanton Carter, as attorney in fact of O. M. Carter, and L. D. Carter, which has been hereinbefore set forth. The power of attorney, under authority of which it is claimed the contract in question was made, has also been set forth heretofore.

"It is pointed out on behalf of complainant that the power of attorney gives no authority to make such a contract, and on the other side L. D. Carter testified that he showed the contract to Captain Carter about a month after its execution, and the latter then ratified it. Counsel for the defendants stated that he would produce before the master an affidavit from Captain Carter covering this point, but he failed to do so, although he subsequently did produce such an affidavit covering the contract as to the salary of I. Stanton Carter.

"The master finds that such an agreement was made for the employment of L. D. Carter at a salary of $10,000 per year, and that he rendered services thereunder during fifteen and one-half months intervening between the date of the contract and the appointment of the receiver herein. As to whether such salary was or was not a reasonable one, the master does not consider it within his province to decide. In the master's opinion L. D. Carter is entitled to a credit for salary, of fifteen and one-half months at the rate of $10,000 per year, or $12,916.66."

Complainant excepts to said finding as error, and says that said master should have found:

"That it was not a part of the master's duty under the order of reference to pass upon the validity of said contract as between the said L. D. Carter and Oberlin M. Carter. That by the terms of the agreement of November 6, 1901, and the order of reference the said L. D. Carter was estopped from setting up any claim of salary, as against the United States and the receiver in this cause, as a set-off against or claim upon the fund traced into L. D. Carter's hands, as found on the debit side of his account as stated by the master.

That by the terms of said agreement L. D. Carter disclaimed all personal interest in said assets claimed by the government and traced to him, or the proceeds thereof and reinvestments thereof.

That if said claim for salary be valid as against the said Oberlin M. Carter, and be a lien on any part of said assets in the hands of L. D. Carter if the same shall be finally determined to be Oberlin M. Carter's. That nevertheless, the

existence of such a lien is not a reason why said asset should not be forthwith turned over to the receiver, to be held pending the litigation, to await the determination of the case on the merits, as between the United States and Oberlin M. Carter; and that as against the United States the said L. D. Carter is forever shut off and estopped from setting up any personal claim, by lien or otherwise, in or to the said assets claimed by the government in the said cause, and traced into his possession, by reason of the aforesaid agreement of November 6, 1901."

In support of the aforesaid exception reference is made to the order of reference of October 15, 1902; to the aforesaid agreement of November 6, 1901, and to the evidence cited under the first exception above.

Inasmuch as the claim for this credit of $12,916.66 is based upon a contract, not otherwise proven to have been made except by the oral testimony of L. D. Carter of an oral ratification made by Oberlin M. Carter of said contract, the said claim of credit rests solely upon the testimony of L. D. Carter, the accounting party.

L. D. Carter not a Credible Witness.

Reference is therefore made to the following evidence showing that the said L. D. Carter is not a credible witness, and that he stands impeached by the record of this cause for contradictory statements, and for making false claims which have been disproved in the record, to wit:

The order of court of August 27, 1901, appointing Max H. Whitney receiver, and directing him to take charge of the assets in question.

The report of the receiver, which is offered in evidence and is in the record of the case, and attached thereto the written demand of the receiver on L. D. and I. S. Carter for said assets, and their written denial that they had any of the assets claimed in the bill in their possession or control.

Also the answers filed by L. D. and I. S. Carter in the case on October 21, 1901, to the rule for contempt which had been issued on September 23, 1901, on their failure to turn over said assets to the receiver, in which answers they again positively deny the possession or control of any of the aforesaid assets.

Reference is also made to the agreement of November 6, 1901, made pending the hearing on said rule for contempt, in which they acknowledge possession of a large part of said

assets; to the record before the master, in which it is admitted by the said defendant, and found by the master, that they were then in possession of and actually turned over to the receiver over $70,000.00 of the assets in question, and that L. D. Carter now has in his possession eleven Kentucky Central bonds described in the bill and found by the master to be reinvestments of the funds in question.

Fraud Apparent on the Face of the Alleged Salary Contract Between L. D. Carter and O. M. Carter, by I. S. Carter, Attorney.

Reference is made to the terms of the alleged contract of May 15, 1900, showing that the only duty assumed by L. D. Carter under said contract was to take charge and assume the responsibility of hiring all attorneys and to pay the same and the expenses connected therewith, consisting of court expenses of all kinds, lawyers' traveling expenses and other expenses, as he and the captain may direct, for the purpoes of securing a fair and honorable trial before some civil court of the United States for Oberlin M. Carter, the money to be furnished by Oberlin M. Carter.

There was no duty of managing Carter's property, or other duty imposed, and for these services a salary of $10,000 was provided.

L. D. Carter was not a lawyer. He was a merchant at Oakland, Illinois, dealing in broom corn, buying and selling it, and occasionally dealing in cattle. (Testimony before the master, page 11.) He claims that he could make $10,000 a year in his business. (Testimony, page 32.)

It otherwise appeared from the master's report that he continued to carry on his broom corn and cattle business during the time of this alleged work for Oberlin M. Carter. He did not keep books of account, according to his testimony, in said broom corn business. (Testimony, pp. 166, 167, 168, 169, 171, 172.)

Of the large amount of money of the O. M. Carter funds which he received into his hands—in fact, all of it—he deposited in the bank to the credit of L. D. Carter & Son, that being the name in which he conducted his business at Oakland, mixed with his own funds. (Testimony, page 169.)

He testified (page 166) that he furnished all the capital in the business, and his son got one-third of the income. But although the business had been run for a number of years, they had never kept any books of account, or had any settlement with his son.

The Alleged Agreement for Salary Construed in the Light of What Was Done Under It.

The master finds (page 51) that the only absence from his business on any trips partaking of the nature of the trips made for the purposes set out in the contract were those shown by the complainant's testimony. (See Exhibit 33, and sub-exhibits thereto, and testimony of E. I. Johnson, Rec., pages 232, 239.) These show that during the whole period it is not proved that he was absent from his home for more than one hundred and thirty-three days.

L. D. Carter testified that he spent a considerable time in Washington, lobbying with Congressmen, etc., in efforts to get some kind of a relief bill through Congress for Carter, but the fact that he spent any such time there, other than that above referred to, is not proven by any competent testimony as found by the master. (See his testimony as to being engaged in lobbying pages 20 and 27 of testimony before the master.) He could not recover for this, if the contract could be construed to cover that kind of services.

Trist v. Child, 21 Wall, 441-452.

Hayward v. Nordburg, 85 F. R., 11.

Irrespective of whether Oberlin M. Carter actually committed the frauds charged in the bill or not, L. D. Carter knew of the fact that Oberlin M. Carter had been convicted before the court-martial, and that the government was claiming that all the funds in Oberlin M. Carter's hands had been derived from those frauds; and the evidence shows that he and I. Stanton Carter were really engaged, more than anything else, in concealing those funds from the government, and in endeavoring to place them beyond the government's reach.

Reference is made to the following evidence:

(1) The securities were hurried out of New York to West Virginia and Illinois in May, 1900, immediately after the government got on the trail of them, in April, 1900. This is shown by the date of the receipt, May 23, 1900, to J. H. Paul, in evidence.

(2) I. S. Carter proceeded to sell off large quantities of these good interest-bearing securities, with the coupons clipped a year in advance, the effect of which was that the purchaser would not have any occasion for a long period to collect the interest, and that the location of the securities could not be found out and the same traced back through

successive sales to him. (See report master, p. 17, and Pf. Exhibit 8.)

(3) A large part of these coupons clipped in advance were delivered by I. Stanton Carter to Kellogg & Rose, attorneys for Greene and Gaynor as well as attorneys for O. M. Carter, and collected through them. (See Pf. Exhibit 27.)

(4) I. Stanton Carter kept (not bearing interest) large quantities of the cash proceeds of those good interest-bearing securities for months in safety deposit boxes in Chicago. He kept them under names different from the name usually borne by him; in one he went by the name of "Isaac Carter," and the other "Stanton Carter." (See testimony of I. S. Carter before the master, page 264.)

(5) While in possession of large quantities of cash money laid up in these vaults, bearing no interest (see testimony, page 96), he negotiated a four and one-half per cent. loan of $23,000, on the Eighth avenue, New York, property, which then stood in O. M. Carter's name, and stored this away also in vaults. (See Pf. Exhibit 6.) At the same time $146,000 of the securities had been converted by D. P. Carter in West Virginia into cash, and held in vaults in West Virginia. The equity of redemption in the Eighth avenue property was then conveyed to L. D. Carter.

L. D. Carter, according to his testimony, entered into this contract with I. Stanton Carter, as attorney for O. M. Carter, on May 15, 1900; and, according to his testimony, and as found by the master, he claims to have been working with I. Stanton Carter in these matters prior to that time. L. D. Carter was engaged in converting these securities, which the government had traced in the Greene and Gaynor hearing in New York, into cash, and in making reinvestments thereof. (See plaintiff's Exhibit 9, account sales of J. F. Harris, broker, and original check endorsed "L. D. Carter." Plaintiff's Exhibit 11, account of L. D. Carter & Son with Oakland National Bank.) The above showing the sale of ten New York, Lackawanna & Western bonds, for $11,883.54, and proceeds, found by the master to be traced into L. D. Carter's possession.

And see plaintiff's Exhibit 3, I. S. and D. P. Carter's receipt, May 23, 1900, to J. H. Paul for said bonds. And Exhibit 8 of the bill, showing the above as part of the same bonds, to take charge of which, or proceeds thereof, the receiver was appointed. See also plaintiff's Exhibits 12, 11, 13 and 3, showing sales of $13,268.60 of these securities in

October, 1900, by L. D. Carter, and appropriation of the proceeds found against him by the master. See also plaintiff's Exhibit 8, account of L. D. Carter with N. W. Harris & Company, and testimony of L. D. Carter, pages 25, 26, 32 and 33, 45, 160 and 161, and defendant's Exhibit 30, showing that of the proceeds of the bonds which had been identified in New York by the government, by description, in the Greene and Gaynor hearing, and which bonds had been sold by L. D. Carter, he used $14,884.35 to make a reinvestment in twenty-one Kentucky Central bonds, which he is now attempting to hold out by setting off this salary claim against it.

That it was attempted by Oberlin M. Carter, I. Stanton Carter and L. D. Carter to keep all these transactions concealed, to prevent the government from tracing the bonds, or the proceeds thereof, is shown by the following evidence also:

Not Keeping Books.

I. S. Carter testified before the master (page 56) that he did not keep any books of account for any of his disbursements, because he did not know how to keep books, "and he, O. M. Carter, told me it was not necessary." (Page 144.) That O. M. Carter told him not to keep any books of account.

L. D. Carter testified (page 16) that Judge Jerry Wilson told him not to keep any books of account, and he fails to produce any account from books of L. D. Carter & Son showing the receipt and disbursement of the $34,000 of cash that was traced through the bank accounts into the account of L. D. Carter & Son, and mixed with the latter's private funds, and which forms part of the $54,531.70 found by the master, on page 33, on the debit side of L. D. Carter's account.

The foregoing references are sufficient to show that L. D. Carter's testimony is so utterly discredited that it ought not to be believed, without corroboration, even if this were not a case of accounting where the rule is that the accounting party must not only produce the vouchers of actual payments, but must prove the document properly.

Eighth Exception.

Complainant excepts to the final statement by the master of the account of L. D. Carter, on page 55 of said report, in that he therein gives L. D. Carter credit as against the fund traced into his hands, as aforesaid, for amount paid J. H.

Winkler prior to September 1, 1901, $950 and $200, and assigns the same as error.

Whereas the amount he should have given credit for for payments to Winkler, as shown by complainant's Exception Fourth, should be $275 only, up to September 1, 1901.

And in this, that said master in said final statement of account gives L. D. Carter credit for personal expenses, $3,000, up to September 1, 1901. Whereas the amount of said personal and traveling expenses, as shown by complainant's Sixth Exception, up to September 1, 1901, is only $1,445.57.

And in that the said master in said final statement of L. D. Carter's account gives him credit for salary, $12,916.66. Whereas he should not have given him credit for any salary as against the fund traced into his hands, with which he is charged on the debit side of the account as found by the master, as shown under complainant's Seventh Exception.

And in this, that in the summary statement of the balances, on page 56, and in the consolidated account, on page 57, the said master brings forward the said errors by him so committed.

And whereas said special master should have stated the credit side of said account of L. D. Carter on pages 55, 56 and 57 of his said report as follows:

Credits.

Paid F. D. Blair	$ 6,000.00
Paid Atwood & Hooper	1,964.54
Paid two attorneys fees C. H. Grovenor	1,500.00
Paid A. J. Rose	1,000.00
Paid I. Stanton Carter	6,000,00
Paid J. M. Wilson	3,400.00
Paid J. H. Winkler to Aug. 27 or Sept. 1, 1901	275.00
Paid O. M. Carter	75.00
Paid personal expenses	1,445.57
Total credits to Aug. 27 or Sept. 1, 1901	$21,660.11

Payments made to third persons not the receiver by L. D. Carter since notice of appointment of receiver, September 1, and prior to November 6, 1901:

Paid H. G. Stone Sept. 12, 1901	$200.00
Paid O. M. Carter Oct. 7, 1901	10.00
Paid J. H. Winkler Oct. 31, 1901	50.00
Paid expenses Leavenworth trip, Nov. 4, 1901	54.46
	$314.46

Payments to third persons not the receiver by L. D. Carter since agreement of November 6, 1901:

Paid Atwood & Hooper Jan. and July, 1902	$ 75.00
Paid life insurance Jan. 7, 1902	453.00
Paid expenses three Leavenworth trips	163.38
Paid O. M. Carter	225.00
Paid A. J. Rose Feb. 18, 1902	750.00
	$1,666.38

Payment to receiver March 13, 1903, ten Kentucky Central bonds, cost price $9,944.43

And should have stated summary as follows:

Summary L. D. Carter.

Total debits	$54,531.77
Total credits to Sept. 1, 1901	21,660.11
Balance in L. D. Carter's hands Sept. 1, 1901	$32,871.66
Payments not to the receiver Sept. 1 to Nov. 6, 1901	314.46
	$32,557.20
To which is to be added coupons on twenty-one Kentucky Central bonds for July, 1901; January and July, 1902, and January, 1903	1,680.00
	$34,237.20
From this is to be subtracted ten Kentucky Central bonds turned over to the receiver March 13, 1903, which cost	9,944.93
Balance of assets in hands of L. D. Carter Nov. 6, 1901, which have not yet been turned over to the receiver	$24,292.27
Deduct amount paid out by L. D. Carter to third persons since Nov. 6, 1901, without authority of court	1,666.38
Balance still in L. D. Carter's hands	$22,625.89

And whereas said master should have stated the consolidated account of I. Stanton Carter and L. D. Carter as follows:

Consolidated Account.

Balance I. S. Carter's account, unaccounted for to the receiver, Sept. 1, 1901		$19,890.46
Balance L. D. Carter's account, unaccounted for to receiver, Sept. 1, 1901		32,871.66
Total unaccounted for Sept. 1, 1901		$52,762.12
Payments to third persons not the receiver.		
By I. S. Carter, Sept. 1 to Nov. 6, 1901	$1,049.32	
By L. D. Carter, Sept. 1 to Nov. 6, 1901.	314.46—	1,363.78
Balance unaccounted for Nov. 6, 1901		$51,398.34
Add coupons on twenty-one Kentucky Central bonds for July, 1901; January and July, 1902, and January, 1903		1,680.00
		$53,078.34
Subtract ten Kentucky Central bonds turned over to receiver March 13, 1903, cost		9,944.93
Balance of assets in hands of I. S. Carter and L. D. Carter, Nov. 6, 1901, which have not yet been turned over to the receiver		$43,133.41
Deduct amount paid to third persons, without authority of court, since Nov. 6, 1901:		
By I. S. Carter	$ 197.28	
By L. D. Carter	1,666.38—	1,863.66
Balance still in hands of I. S. Carter and L. D. Carter		$41,269.75

Ninth Exception.

For that the said master, in paragraph XVIII, page 58, of his report, finds as follows:

"Of the total receipts of the defendants, I. S. and L. D. Carter, the sum of $21,529.15 was received from sources other than Paul, Bragg and Westcott. Deducting this amount from the balance in their hands November 6, 1901, $30,992.30, it appears that there was then in their hands of receipts from Paul, Bragg and Westcott, unaccounted for, the sum of $9,343.15, and, in addition, the sum of $21,529.15, received from other sources and also unaccounted for."

And for that said master amends his report on page 60,

after the payment to the receiver on March 13, 1903, of the ten Kentucky Central Bonds, and finds that said payment constitutes a complete accounting for the assets received from Paul, Westcott & Bragg.

And complainant assigns said findings as error, and says said master should have found:

"That of the total receipts of the defendants, I. S. Carter and L. D. Carter, the sum of $21,529.15 was received from sources other than from J. H. Paul and R. E. Westcott and James F. Bragg, and that the amounts remaining in their hands from receipts from Paul, Westcott and Bragg at the following respective dates is as follows:

The total balance from all sources in hands of L. D. and I. S. Carter at the date of notice to them of the appointment of the receiver, Sept. 1, 1901, is	$52,762.12
Deduct	21,529.15
Receipts from Paul, Westcott & Bragg, unaccounted for, to Sept. 1, 1901, to the receiver	$31,232.97
Ten Kentucky Central bonds turned over to receiver March 13, 1903	9,944.93
Balance April 15, 1903, in hands of I. S. and L. D. Carter from Paul, Westcott & Bragg, not delivered to the receiver	$21,288.04

Tenth Exception.

For that the master, in his report, page 59, finds as follows:

"Also, that, in addition to the cost price of said two bonds, amounting to $2,017.01, said I. Stanton Carter has failed to account for $11,454.18, cash proceeds of assets received by him from various sources, and which he should properly account for herein; and, in addition thereto, he should account for all coupons on said above mentioned bonds accruing since March 11, 1901."

And complainant assigns so much of said finding as fixes the sum of $11,454.18 as the amount of cash proceeds, in addition to the cost of said two bonds, as being the sum the said I. S. Carter should account for as error.

And whereas said master should have found:

"That the said I. S. Carter has failed to account to the receiver for cash proceeds in his hands for which he is re-

quired to account at the following respective dates, in addition to the said two bonds, to wit: the one Michigan Telephone Company bond and the one Kentucky Central Railroad bond, as follows:

Total amount in hands of I. S. Carter at date of notice to him of appointment of the receiver, Sept. 1, 1901	$19,890.46
Cost of the two bonds	2,017.01
Balance in I. S. Carter's hands Sept. 1, 1901, in addition to the two bonds	$17,873.46
Payments made by I. S. Carter to sundry parties between Sept. 1 and Nov. 6, 1901, the date of the agreement	1,049.32
Balance in hands of I. S. Carter Nov. 6, 1901, in addition to the two bonds and coupons on same maturing since their purchase	$16,824.14

Eleventh Exception.

For that the said master, page 59 of his report, finds as follows:

"The master further finds that the said L. D. Carter has failed to account for $15,544.73, cash proceeds of assets received by him from various sources, and which he should properly account for herein, making, with the addition of said coupons, a total of $17,224.73, and the master is of the opinion that the receiver herein should be allowed to decide whether to take said bonds and pay to said L. D. Carter the difference between their cost price and $17,224.73 or whether to allow said Carter to keep said bonds on paying said last named sum to the receiver."

And complainant assigns said finding as error.

And whereas said master should have found:

"That the said L. D. Carter has failed to account to the receiver for the balance of $24,292.27 of assets in his hands November 6, 1901, the date of the agreement, which balance in his hands at said date includes eleven of the twenty-one Kentucky Central bonds purchased with the trust funds in controversy, and which eleven bonds cost $10,939.42. That in as much as by the terms of the agreement on November 6, 1901, the said L. D. Carter was required to disclaim any personal interest in any of the said assets traced into his

possession, custody or control, and to turn over to the receiver all of said assets so traced, except such as 'have not heretofore been bona fide disposed of by them, and, therefore, beyond their (I. S. and L. D. Carter's) control,' the master finds that said eleven Kentucky Central bonds should be forthwith turned over to the receiver, and that no claim on account of salary due from O. M. Carter to L. D. Carter can be set off against said bonds or against the cash proceeds of the aforesaid assets traced into the hands of L. D. Carter as aforesaid, as against the United States or the receiver in this cause. That if said salary claim of L. D. Carter be a valid claim against the said O. M. Carter, its enforcement as against the aforesaid assets in controversy must await the final determination of the merits of the main cause, in which the true ownership of said assets is to be determined as between the United States and said Oberlin M. Carter."

Twelfth Exception.

For that the master, on page 61 of his said report, in stating his conclusion thereon, finds:

"If it should develop hereafter that the securities and moneys in question were stolen property, or the proceeds of stolen property, and that I. S. and L. D. Carter, or either of them, knew or had good grounds for believing that fact, some portions of the accounts as above found would require modification. The allowance of salary to both of the Carters is made upon the theory that the property handled was trust property, and not on the theory that it was stolen property."

And complainant assigns said finding as error, in this, that the very purpose of the reference was to determine what assets should go into the hands of the receiver for preservation until the issue as to whether they are stolen or fraudulently diverted trust funds shall be tried between the United States and the defendants, O. M. Carter, I. S. Carter and L. D. Carter, and to award $19,666.66 of salaries to I. S. and L. D. Carter and to allow them to retain eleven Kentucky Central bonds and other assets admitted to be part of the trust funds in controversy, is not only to ignore the orders of the court, and the agreement of the parties, but places it in the power of the said defendants to dissipate said assets, and place it beyond the power of the court to give complainant relief in respect thereto on final decree. Moreover, the

question as to whether said I. S. Carter and L. D. Carter had any claims on the assets proved into their hands, for salary or otherwise, was not referred to said master at all.

Wherefore complainant prays the judgment of the court that the said report of William M. Booth be reversed in the matters herein excepted to and complained.

MARION ERWIN,
Special Assistant to the Attorney General,
Complainant's Solicitor.

Endorsement: Complainant's exceptions to Report of W. M. Booth, master, filed April 24, 1903. Marshall E. Sampsell, Clerk.

And on to-wit: the 25th day of April, 1903, came Horace G. Stone, solicitor for L. D. and I. S. Carter, and filed in the clerk's office of said court exceptions to the report of W. M. Booth, master, in the words and figures following, to-wit:

EXCEPTIONS OF L. D. CARTER AND I. S. CARTER TO REPORT OF SPECIAL MASTER BOOTH.

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

United States of America,
Complainant.
vs.
Oberlin M. Carter, *et al.*,
Defendants.
} In Equity.

In re reference October 15th, 1902, to the Honorable Wm. M. Booth, Master in Chancery. Exceptions to Master's Report.

The Defendants, Lorenzo D. Carter and I. Stanton Carter, each respectfully submit that the Master erred in his report herein in the following matters:

I.

In holding that L. D. Carter and I. Stanton Carter were bound to account as if complainant was their cestui que trust in the absence of proof that complainant is their cestui que trust or the cestui que trust of Oberlin M. Carter.

II.

In exceeding the reference and requiring an equitable accounting from L. D. and I. S. Carter as Trustees where the reference was limited to an ascertainment of whether they had complied with the orders of court herein as modified by the contract order of November 6th, 1901.

III.

In disregarding the testimony of L. D. Carter.

IV.

In disregarding the testimony of I. Stanton Carter.

V.

In disallowing items, or parts of items, of the disbursements by L. D. Carter numbers 1, 2, 3, 7, 9, 10, 11, 12, 13, 14, 16, 17, 20, 22, 23, 24 and 25.

VI.

In disallowing items, or parts of items, of the disbursements by I. Stanton Carter numbered 8, 10, 11, 12 and 24.

VII.

In disregarding the accounting between L. D. and O. M. Carter.

VIII.

In disregarding the accounting between I. S. and O. M. Carter.

IX.

In finding that the two bonds in controversy do not belong to I. S. Carter as his private property.

X.

In disregarding the contract of November 6th, 1901, and requiring L. D. and I. S. Carter to furnish more information than they can furnish.

XI.

In finding I. S. Carter liable for the missing coupons amounting to $1,437.50.

XII.

In finding I. S. Carter liable for the coupons collected by J. H. Paul amounting to $1,062.50.

XIII.

In finding I. S. Carter liable for property received by D. P. Carter.

XIV.

In holding that L. D. or I. Stanton Carter ever disposed of any of said property except bona fide.

XV.

In finding that Section Two of the contract of November 6th, 1901, has not been complied with.

XVI.

In holding L. D. Carter liable for the books, receipts, etc., delivered to O. M. Carter's attorney, Judge Wilson.

XVII.

In disregarding the entries made by L. D. Carter in his books as to his disbursements for expenses and for mining expense.

XVIII.

In finding that L. D. Carter should turn over the twenty-one Kentucky Central bonds or any part of them.

XIX.

In finding that I. S. Carter should turn over the two bonds in controversy herein.

XX.

In finding any balance against L. D. Carter.

XXI.

In finding any balance against I. Stanton Carter.

XXII.

In disregarding the contract between L. D. Carter and O. M. Carter with regard to the manner in which L. D Carter should do business for O. M. Carter.

XXIII.

In disregarding the contract between I. S. Carter and O. M. Carter with regard to the manner in which I. S. Carter should do business for O. M. Carter.

XXIV.

In charging L. D. Carter interest on money in his hands which belongs to him.

HORACE G. STONE,
Solr. for L. D. and I. S. Carter.

Endorsement: Filed April 25, 1903. Marshall E. Sampsell, Clerk.

And on to-wit: the 13th day of April, 1908, came the United States and filed in the clerk's office of said court a motion in the words and figures following, to-wit:

MOTION OF UNITED STATES TO HAVE OPINION OF COURT FILED NUNC PRO TUNC.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

The United States of America *vs.* Oberlin M. Carter, *et al.*	In Equity No. 25980. Bill and Auxiliary Bills.

Motion of the United States.

Now comes the United States by Marion Erwin, Special Assistant to the Attorney General, and shows to the court that after said cause had been argued on the merits and had been held for some time in deliberation by the court, the court

on January 9, 1908, handed down an opinion, copies of which were furnished to the respective counsel in said cause and a copy of which is hereto attached marked Exhibit A. That no decree was at that time entered on the records of the court covering the questions recited in said opinion and that said opinion has never yet been filed in the Clerk's office of said court as movant is advised.

That thereafter counsel for the respective parties appeared before the court and arguments were had for the settlement of the terms of the final decree: That thereafter on March 17, 1908, the court handed down and delivered to counsel for the respective parties an opinion in further direction as to the settlement of the terms of the final decree, a copy of which is hereto attached as Exhibit B, and that said last mentioned opinion has never been filed in the Clerk's office of said court as movant is informed, and on March 19th and 20th, 1908, further hearings were had before the court by counsel for the respective parties for the settlement of the terms of said decree and that thereafter, to wit: on March 21, 1908, a decree was drawn by counsel for the respective parties to conform to the aforesaid written opinions delivered by the court and its directions delivered orally, and was signed and entered by the court.

In order that the record of said cause may be complete and correctly speak the facts and proceedings movant now respectfully prays that the court will by its order direct that its written opinion handed down on January 9, 1908, as aforesaid, he directed to be filed by the clerk nunc pro tunc as of January 9, 1908, and that the said written opinion handed down by the court on March 17, 1908, as aforesaid be directed to be filed by the Clerk nunc pro tunc as of March 17, 1908.

MARION ERWIN,
Sp. Asst. to the Atty. Genl., Compl. Solicitor.

Endorsement: Filed April 13, 1908. H. S. Stoddard, Clerk.

And on to-wit: the 14th day of April, 1908, in the December term, 1907, of said Court, in the record of proceedings thereof, in said entitled cause before the Honorable Christian C. Kohlsaat, judge presiding, there was made by the Court, the following order and entry thereof:

ORDER TO FILE OPINIONS OF THE COURT NUNC PRO TUNC.

The United States of America
vs.
Oberlin M. Carter, *et al.*
} In Equity Bill No. 25980.

Pending in Northern District of Illinois, and Auxiliary Bills pending in other Districts.

On motion of the complainant, it is ordered that the opinions of the court in the above stated cause, which is hereto attached marked Exhibit A, and which was handed down by the presiding judge on January 9, 1908, be filed in the record nunc pro tunc as of January 9, 1908, and that the opinion of the court, which is hereto attached marked Exhibit B, and which was handed down by the presiding judge on March 17, 1908, be filed in the records of said cause nunc pro tunc as of March 17, 1908.

Exhibit A.

OPINION OF COURT HANDED DOWN JAN. 9, 1908.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

United States
vs.
Oberlin M. Carter, *et al.*
} Gen. No. 25,980.

Kohlsaat, J.

In this suit the government seeks to obtain from defendant, Oberlin M. Carter, possession and title to certain securities and real estate held by him, or in the name of the other defendants for him, which property, it is alleged, Carter purchased or caused to be purchased for him with moneys obtained by him or for him through fraud practiced by him upon the government in the letting and execution of certain contracts for the improvement of Savannah River, Savannah Harbor, Cumberland Sound, and several waterways in that vicinity. The amount in dispute somewhat exceeds four hundred thousand dollars ($400,000). The bill charges that Carter entered into a conspiracy with the Gaynors and Captain

Greene, contractors, or some of them to pay them or some one for them an exorbitant price for the work called for and then accepted from them, in discharge of the contract, constructions inferior in quality and quantity of material to such a degree that vast sums were realized by the contractors, in which sums Carter shared.

Two startling facts stand fully proved and practically admitted upon the record:

1st. The work was performed by Carter within the appropriation, in such a manner as to secure an increase in depth of the channel of Savannah River, two hundred forty feet in width at bottom, from Savannah to the ocean, of nine feet, whereby that city became the second city on the Atlantic coast in the volume of its commerce. This end had long been sought for without avail. The government engineers, almost with one accord, pronounce the work a triumph of engineering skill.

2nd. Proceeding from the contract in regard to these improvements, there is traced a mysterious fund of vast proportions, into the hands of some one, perhaps R. F. Westcott, father-in-law of Carter, a retired contractor of considerable wealth, now deceased, who was, in his lifetime, familiar with large transactions, from whom Carter claims to have received the properties in suit.

The transactions involve a number of construction contracts for improvements along the Atlantic coast in the vicinity of Savannah and Fernandina. An attempt to deal with each of these specifically would impose very considerable complications, as well as unnecessary prolixity, inasmuch as they all practically involve the same condition. Two of these contracts are, 1st, the contract of October 22, 1892, covering the expenditure of more than $3,000,000, upon the Savannah River and projects incident thereto, and, 2nd, the contract of October 8, 1896, for improvements in Cumberland Sound involving the sum of $2,000,000. It does not appear that any part of the property sought to be recovered herein was procured with moneys accruing to Greene & Gaynor out of this latter contract, but it serves to illustrate the methods employed in letting contracts and conducting the work under all of the contracts. These two contracts are typical of all the contracts. Besides the fact that the amounts involved are the largest, they disclose the general course followed in that class of work in that locality at that time by defendant, Carter; so that they may be dealt with as representing the course of procedure complained of. These two contracts will herein-

after, for brevity's sake, be termed the contracts of 1892 and 1896, respectively.

The record is unconscionably voluminous, covering about 50,000 pages; counsel on both sides have with great consideration and skill summarized it; so that the court is relieved of the burden of several years of reading.

Manifestly, the first attention of the court should be directed to the inquiry as to whether the evidence discloses fraud on Carter's part in disbursing the funds appropriated by Congress for these improvements. The finding of the court-martial was that he had committed that fraud. It must be borne in mind, however, that the evidence now before the court embraces not only that produced upon the court-martial proceedings, but a vast amount of additional evidence and that the finding of that tribunal cannot, of itself, be deemed conclusive herein, upon any material point. Moreover, it should be borne in mind that it was held by so great a legal authority as ex-Senator Edmunds of Vermont, in a reference made by the Secretary of War to him for the purpose of an opinion that the judgment of the court-martial was not sustained by the evidence adduced before it. The present suit involves directly, the title to property,—indirectly, the guilt or innocence of defendant, Carter. Neither party to the case can justly complain that the evidence has been in any respect unduly curtailed. The case has been submitted upon the merits, and without reliance upon technicalities. Greene & Gaynor were operating under their corporate name, The Atlantic Contracting Company of New York, which name will be used interchangeably with that of Greene & Gaynor.

The government's case rests largely upon circumstantial evidence. This may be summarized as follows, viz.:

(1) Defendant Carter was personally on friendly terms with Benjamin D. Greene, who was a retired army officer, and with John F. Gaynor.

(2) Carter had dealings of his own with Greene and the Gaynors, and at times contemplated joining them in extensive public contract work, outside of government work.

(3) As a step towards the alleged scheme to defraud the government, and share the booty with Greene & Gaynor, he caused notices to bidders under the specifications furnished by him for said two improvements of 1892 and 1896 to be published twenty-five days and twenty-two days, respectively, while the rules required thirty days, unless for good reasons a shorter time is specified.

(4) As a further step Carter's specification called for three kinds of mats, known as Nos. 1, 2 and 3, each differing very substantially from the others in form and price, and bidders were required to bid one price for them, giving to him the right to use whichever mat he might deem best, so that bidders were obliged, in self-protection, to base their bids upon the most expensive of the three, whereas, he privately advised Greene & Gaynor that he would practically use only the third, or cheapest mat, enabling them to use that mat as a basis of bidding, whereby they could and did under-bid the others.

(5) That he discouraged other bidders by unnecessarily withholding details necessary to intelligent bidding, and by exaggerating the expenses and difficulties of the work.

(6) That he accepted from Greene & Gaynor fascines used in mats, known as No. 3, made of leaves, pine tops, saw palmetto and other improper material, very loosely put together, in length much below the specifications, and placed end to end instead of being overlapped and built into each other, so as to break the joints, as required by specification.

(7) That he allowed these mats to be made into multiple mats averaging about eight single mats each, and placed in position in that form, thereby saving the cost of grillage poles and in other ways causing great saving to the contractor.

(8) That he paid for the mats by the square yard, as against the former method of buying by the cubic yard, and paid, therefore at prices three or four times higher than theretofore, and in quantities three or four times greater than those used in former contracts.

(9) That Greene & Gaynor realized a profit of several million dollars from said contracts, one-third of which mysteriously disappeared, while at about the same time there were deposited in the bank account of R. F. Westcott, from time to time, as payments were made on the contracts, amounts practically equalling the mysterious missing one-third, with which funds the property in dispute was purchased, and that Carter was a party to those transactions.

For defendants, it is insisted:

(1) That the notice was in the usual form and published the usual length of time, and approved by the Department.

(2) That the three different kinds of mats were of substantially the same value, and their inclusion in one bid not

uncommon, and that every bidder who inquired, was told which mat would be used, i. e., No. 3, and so understood.

(3) That every reasonable assistance and encouragement were given to those desiring to bid.

(4) That the fascines were made in substantial compliance with the specification, both as to material and construction, with, perhaps, a few exceptions, where they were overlooked by reason of the great quantity used.

(5) That the mats were paid for in the way then prevailing, i. e., by the square yard, and that mats made about eighteen inches in height were more suitable for the character of work required in those improvements.

(6) That the use of multiple mats was permissible; that they were difficult to handle and much better adapted to the work; that the difference per mat in the amount and cost of material used as compared with single mats was negligible.

(7) That no more fascines were used than the work required; that the amount thereof used in canvassing for bids was stated to be more or less, and that an increase in amount would not have decreased the price if known.

(8) That it is not true that the price paid was appreciably in excess of former prices and that it was impractical to buy mats by the cubic yard.

(9) That the work, so far as completed, was a success and performed well within the appropriation.

(10) That if money was paid to Westcott by Greene & Gaynor, it was paid without either knowledge or suspicion of that fact on Carter's part, and that to the best of his ability, he honestly performed his duty in the premises.

Carter was placed in charge of the Savannah District in April, 1885 under Gen. Gillmore, and so continued until the latter's death in 1888. Afterwards, under Gen. Graighill, he continued in charge, until relieved in July, 1897, by Captain Gillette. His retirement from the position was voluntary in order that he might accept positions elsewhere in the government service. Some time about the early part of 1884, he first met Greene, who was a retired army officer. In 1888 he considered the question of going into the contracting business with Greene & Gaynor in Chili. He writes in regard to certain pine lands to John F. Gaynor in 1885. Later (1886) his brother borrowed $1,600 from Greene, for which Carter went security. This was paid up. The record justifies the statement that Carter and Greene and John F. Gaynor were more or less intimate and had, at various times, talked of

entering into private business relations, while at the same time Greene & Gaynor were working upon government contracts under his direction, though there is nothing to show that at the time there was anything improper contemplated by either of them.

After the preparation of specifications for the said two improvements of 1892 and 1896, it was necessary that advertisements be made for bids thereon. The army regulations, based upon the Act of Congress calling for "sufficient public advertisement" in such cases, provided for a thirty day publication and adds: "A shorter period may be named, if the necessities of the service render it desirable, but no period of less than ten days shall be designated, except in case of emergency." It is further provided that in cases of large purchases, thirty or more days' notice should be given. The proposed contract must be submitted to the War Department for approval. This course was pursued in the two cases under consideration, as well as in all the other cases. In a table showing the time of publication in seventeen contracts, ranging from 1890 to 1896, under Carter's direction, the notice in no instance exceeded twenty-seven days in the local papers and twenty-three days in the engineering journals. These were all approved by the War Department. General Craighill, retired chief of Engineers, testifies that it was usual to advertise for less than thirty days. To the same effect is the testimony of Major F. A. Mahan, Corps of Engineers. Col. Marshall, formerly in charge of Chicago Harbor, says it depends on the circumstances of each case. If the character of the work is well known and contractors are familiar with its construction, the amount involved, he adds, in substance, would be of no moment. In such case, "I think I would advertise as short a time as I could in my judgment." Col. Willard, of the Engineer Corps, testifies that all large contractors know what is going on before the engineers do; that the length of time of advertisement is of no particular value to the contractors. Major Townsend testifies that he has varied the time of advertising all the way from ten to thirty days or even less. It appears from the record that contractors on national works keep track of the River and Harbor and sundry civil bills as they are passed, and study them with a view to becoming bidders, taking advantage of the data in the war office reports. A list of the periods of advertising done by Gen. Gillmore under twenty-one contracts shows no instance of thirty days, and quite a number of less than twenty days

—one as low as eight days. In the case of the 1892 contract, notice was inserted from July 27, 1892, calling for bids to be opened August 20, 1892. This was recalled by the Department and a new notice, setting out changes in the work was published August 21, 1892, for bids to be opened September 17, 1892. This is the notice complained of. Gen. Craighill says that in a similar case he would deem ten days sufficient. This course was approved by the Department. The record makes it very plain that Carter, in this respect, did not depart from the usual course obtaining in like cases. Indeed, Mr. Erwin, for the Government, concedes this and says:

"We do not contend that he has to advertise any of these contracts for 30 days by direct law, but what we charge is that he had discretion vested in him in fixing the time, and we say that in exercising that discretion, he did it deliberately and purposely in a way to cut off competition."

There is nothing inherent in the matter of notice which suggests any fraudulent intent. If there was any improper notice or means employed, it must be found outside the mere manner of giving the notice.

The specifications call for three different styles of mats to be employed in the work in such quantities, respectively, as the engineer in charge might deem desirable. Mat No. 1 was composed of logs laid parallel to each other and then fastened together in that position and covered with several inches of brush, the whole bound together by poles to the required dimensions. No. 2 consisted in artificial logs, made of brush bundles, called fascines, laid in alignment, tightly bound or choked at regular intervals, and placed side by side as in No. 1. Across these were placed, transversely, long brush logs, one on each edge, and one down the middle. The whole were then firmly bound together by grillage poles. No. 3 consisted of brush logs, firmly united by grillage poles as in No. 2, but lacking the transverse brush logs. Double sets of grillage poles were provided for.

It is contended by complainant that these three mats differed very materially in cost per square yard to the contractor, and that by reason of inside information to the effect that only the No. 3 mat would be insisted on, the Atlantic Contracting Company was able to underbid other contractors. Carter's method in this respect was approved by the Chief of Engineers, if not required by him. Practically only No. 3 mattresses were used. Captain Gillette, who succeeded Carter, and became the chief factor in Carter's prosecution, tes-

tified that mat No. 2 had ten per cent. more brush in it than mat No. 3 and that it would cost at least twenty-five per cent. more than mat No. 1. W. H. Venable, a contractor, says he would have bid had the bids for the mats been received separately. Major Black, of the Engineer Corps, for complainant testifies that he did not consider it right to require one price bid for all three designs, but states that mats two and three were of substantially the same value and both worth more than design one, based on prices paid at St. Augustine and St. Johns Harbor, Florida. Major Gaillard, Corps of Engineers, testified that the cost of mats two and three would be practically the same. Major F. V. Abbott testifies that he called for separate bids on somewhat similar mats at Winyaw Bay and received about the same bid for each design. J. W. Rutherford, contractor, states that the difference in cost of the three designs was a very small matter in the totality of the contract and that they were practically of the same cost. He as a bidder did not consider the difference in cost as of any importance. C. P. E. Burgwyn, a civil engineer and contractor, and P. Sanford Ross, a contractor, both competitors of Greene & Gaynor, say they did not think the difference in cost was at all embarrassing in making out their bids. To the same effect is the testimony of A. R. Stewart, a contractor, James A. Bryan, also a contractor, E. L. Friday, a contractor, and Roderick G. Ross, a contractor, all prominent in their lines and competitors of Greene & Gaynor. The latter says designs two and three cost something more than design one. Complainant undertakes to minimize the weight of the testimony of these witnessse by showing inexperience with regard to mats and friendly relations on their part with Greene & Gaynor. Making due allowance for both of these, I am clearly of the opinion that the evidence shows there was nothing unusual or improper in Carter's action in treating the case of the three designs as practically the same when considered with reference to the fact that different kinds of work might require different designs, on the same contract. Of itself, it discloses no evidence of a conspiracy to defraud, nor does it tend so to do. Complainant alleges that while Carter embarrassed other bidders by including the three designs as of one price, he advised Greene & Gaynor that he would use the third so that they were able to underbid the other bidders. There is no direct evidence in the record to sustain this charge. It does

appear, however, that a number of those intending to bid, i. e., C. C. Ely, agent for P. Sanford Ross, W. F. McCauley and L. Y. Schermerhorn were advised that design 3 would be mainly used. Contractors J. W. Rutherford, A. R. Stewart, J. L. Grimm and R. G. Ross also knew that fact. There seems to be little ground for complainant's contention in that behalf. There is some attempt in the record as against Carter's denial, to show that Carter discouraged would-be bidders by: 1, Refusing to furnish specifications to persons representing undisclosed principals; 2, Sending only one copy to known bidders, notwithstanding the time was short, whereas he knew it required three copies to enable one to prepare a bid, and then advising them that should they conclude to bid, he would on application, send the other two copies, with the request to return the copy sent, if there was no intent to bid, thus advising Carter in advance who was going to bid, where information, it is claimed, was in turn communicated to Greene & Gaynor; (3), Sending wrong paper when time was short, or knowingly sending copy to wrong address; (4), Exaggerating the difficulties and expense of doing the work.

When it applied for specifications prepared for the 1892 contract, on August 26, 1892, in which the opening of bids was to occur on September 17, 1892, a period of twenty-two days afterward, the American Dredging Company, by L. Y. Schermerhorn, its president, received in a letter dated August 29, only one copy, accompanied by the request that it consider the same carefully "and if you decide to bid upon the work, I shall take pleasure in showing you over the same and giving you all the available information concerning it and furnishing you with the two remaining copies of the specifications necessary to enable you to submit your bid. If you do not intend to bid, please return the enclosed specifications." On September 7, the company wrote for the other two copies, which were sent September 7, with the information that a bond for $500,000 would be required on the dredging contract. Schermerhorn testifies he went to Savannah, got all the information he wanted, freely, and put in his bid. The same method had theretofore been pursued by engineers formerly in charge of improvements in that vicinity, i. e., Captains Post and Bailey, Major Mahan, Col. Willard, Major Townsend, George Y. Wisner, civil engineer, P. S. Ross, contractor, L. Y. Schermerhorn, above referred to as having received only one copy at first, and J. R. Gilmore, chief clerk for twenty

years of Gen. Gillmore, all state that as a usual thing only one copy was sent at first and on application afterwards, the other two were furnished. The latter witness says that many applications were received from parties who didn't care to bid when they had seen the character of the work. One witness, James Foley, sent for specifications on a bet that he could get them, and did receive them from Carter, when he had no intention of bidding. Carter seems to have made several mistakes, such as enclosing the wrong paper to the National Dredging Company, and addressing San Francisco Bridge Company at San Francisco instead of New York. It is difficult to see how any sinister motive can attach to these two very common mistakes. I give them no weight. As above stated, it is in evidence that parties likely to compete for harbor improvement and other government work, began preparing for their bids, as soon as the appropriation bills were passed. It further appears that the character of the work in these two improvements was such as to require the services of parties skilled in waterway construction; so that persons entering upon such contracts advisedly were not limited to information gathered from the specifications alone, though, of course, before bidding intelligently copies were necessary. It is urged that Carter, on several occasions, took pains to impress bidders with the difficulties of the work. Venable, whose ability to meet the requirements of the 1896 contract was unknown, says Carter told him it would require an equipment for the two contracts of at least $400,000, and asked him the extent of his preparation for the undertaking, and told him a tramway would have to be built over the breakers, costing many thousand dollars; that the water in the Sound was very rough; whereas, Greene & Gaynor's equipment, it is claimed, turned out to amount to only $27,000, and no tramway was constructed by them. This is denied by Carter. If Venable had possessed information, however, and judgment sufficient to enable him to make an intelligent bid in those constructions, he would not have had to rely upon Carter's judgment. The facts seem to be that he was inexperienced in that line and desired to enter into the competition for the purpose of selling stone to the successful bidder. Before the bids were opened he had made an arrangement, he says, with John F. Gaynor to supply the stone necessary for the work and had withdrawn from the contest. Afterwards, by reason of the use of brush fascines almost exclusively, his deal proved to be barren of results, and he became em-

bittered. Whether he was imposed upon is not here material. He is corroborated by F. A. D. Hancock, who expected to work with him on the contract. It appears that there were about fifteen bidders present at the opening of the bids on the 1892 contract. There were three bidders under the 1896 contract. As is not at all uncommon, there appears to have been an attempt on the part of the bidders to stifle competition. Whether Carter knew of this is not shown. Certainly, there is nothing in the record with regard to the opening and letting of the bids in and of itself calculated to cast suspicion upon Carter's conduct.

The contract of 1892 for the improvement of the Savannah River as well as the other contracts complained of, called for bids for mats, by the square yard. These contracts were all submitted to and approved by the Chief of Engineers' office, and the Department, upon suggestion of the engineer in charge, whose recommendations in such matters, the Government claims, are generally followed. Until Carter pursued this method, it is asserted, mats had always been purchased by the cubic yard. This does not seem to be justified by the evidence. Mats had been paid for by the square yard by Col. Black in 1888 and 1890, Col. Bixby, 1889 and 1890, Capt. Carter, 1891, and Col. Stanton, 1892. Whenever mats to any considerable amount were required, they were purchased by the square yard. By paying therefor, at ninety-five cents per square yard of prepared mats the Government insists that the cost of construction almost quadrupled that of work of the same nature and locality carried on by the Government prior to 1891.

The fascines were choked, i. e., tied, at each end and oftener if necessary to a diameter of nine inches, leaving the intermediate portion of the fascine "bulged out." These laid in mat form, including grillage poles, it appears gave a body 18 inches in height. The price paid covered the above 18 inch structure. In several small prior contracts, the fascines were procured by the cubic yard, and the contractor was then required to make into mats whatever was necessary, without any charge therefor. Very little material was so put together. Col. Bixby, of the Corps of Engineers, claims for himself and Major Black the credit of first using mats by the square yard, back in 1889 and 1890. The same method of measurement was employed by Major Stanton in about 1892. Carter had previously, in one or two instances, paid for these brush mats by the square yard. There seems to be no reason

why this class of work should not have been dealt with by the square yard. The only manner in which fraud would in such case be accomplished, must be in the price paid, or in the character of work accepted, or both.

Substantially all of the fascines used in the several improvements under consideration were made up into mats. These fascines are required by the specifications to "be made of live brush of cedar, water oak, myrtle, sweet gum, or any other variety of wood approved by the engineer officer in charge. The fascines will be from twelve (12) to one hundred (100) feet in length (contract of 1892, and 30 to 100 feet in contract of 1896) and must be compressed tightly by an approved form of choker to a diameter of nine inches at intervals of two (2) feet, where they must be bound firmly with wire or tarred rope of approved strength. The brush used shall be as straight and well trimmed as can be obtained, the fascines shall be carefully and thoroughly made and handled with care. They shall be piled on shore or on barges for measurement in such way as the Engineer officer in charge may direct."

For the purposes of canvassing bids the specifications of the 1892 contract assumed the quantities of different materials to be used as follows, viz.:

Square yards of mattresses	350,000
Cubic yards of fascines	300,000
Sawn timber (feet)	800,000
Riprap stone, cubic yards	200,000

Under the power reserved in the contract authorizing the engineer to vary the relative amount of each, Carter increased the amount of mattresses to 1,363,572 square yards, to the practical exclusion of the other materials above enumerated. He was thus able to keep within the estimate of cost of the whole and within the appropriation, while at the same time he accomplished the results sought for. Conceding the power of the engineer in charge to make such a radical change, some of the expert witnesses were of the opinion that the proposed change should have been submitted to the war office for approval in view of its radical nature. For defendant it is insisted that the frequent reports, showing the progress of the work, advised the Department of what was being done, which was all that was required. It is not denied that the substitution appears fully in these reports. In and of itself, no improper motive can be deduced on Carter's part, from his course in this respect. The failure of the De-

partment to call attention to the change might be fairly assumed to indicate approval.

The specifications provide that the third design mattress, i. e., the one actually used,

"will consist of a bottom grillage of poles of live saplings, of pine or other timber of a kind approved by the engineer officer in charge. The poles must be straight, of slight taper, of an average diameter of from four (4) to five (5) inches, and not less than three (3) inches at the small end, and must be placed from four (4) to eight (8) feet apart between centers, both longitudinally and transversely, and spliced together with long scarf joints in a manner satisfactory to the engineer officer in charge. Upon the grillage will be placed a layer of closely compacted fascines, surmounted by a top grillage similar in design to the one at the bottom. The poles of each grillage will be securely fastened together by suitable wire or rope lashings, and the upper and lower grillages will also be securely fastened together in such manner as the engineer officer in charge may approve."

It is further provided therein that,

"The size of the mattresses will be fixed by the engineer officer in charge from time to time. In general they will be from twenty (20) to one hundred (100) feet in width, have such lenghts as may be convenient for handling, &c."

It is also provided therein that,

"As a general rule all materials will be measured by the engineer officer in charge, or his representative, after their arrival upon the ground and just before being placed in the work. The mattresses may also be inspected as made."

Greene & Gaynors' bid for mattresses per square yard was, as above stated, ninety-five cents; for fascines per cubic yard, $1.60. It is the contention of the Government that the fascines should have been procured and measured by the cubic yard, and, when required, made into mats without additional cost, as was done on several former jobs, where it appears the amount of mattresses required was nominal. The evidence shows that while small quantities of brush fascines can be readily obtained in almost any locality, large quantities are hard to get. It may well be that in volume such as was used in the 1892 contract, a very considerable area would be devastated. The evidence shows this to have been the case. It is shown by the evidence that the construction of fascines into mattresses is a matter of very considerable expense. Col. Bixby of the Corps of Engineers testifies that,

"Buying brush alone,—buying fascines alone, why they would be stacked up ordinarily, stacked up and measured in the same way you would measure cord wood—stacked up and measured by the cubic foot or cubic yard, but when they were made into the mattresses, there was so much work connected with building them into the mattresses, that the only feasible way I saw at the time was to pay for them by the square yard, which was the reason that I put it into those specifications."

It is not charged in the bill that $1.60 per cubic yard for fascines was unreasonable. Carter testifies that it would require about nine of the fascines made from the scragly brush found on the coast and choked to nine inches and one yard long to make a cubic yard; that the same fascines put into the form of a brush mattress would compress so that four to the square yard would be required and that when subjected to the pressure and weight of an eight course multiple mattress, it would take six fascines to make a square yard, as against nine in a cubic yard, or perhaps ten. Each square yard, he testifies, would thus require 6/10 of a cubic yard of fascines or ninety-six cents. Adding to this the cost of grillage, estimated by Carter on data furnished, as he claims, by Major Black and Captain Gillette, to amount to twenty-three cents, the cost of one square yard of fascine in multiple mat form, abounts to the sum of $1.19. In September, 1893, the contractors on the 1892 contract began to construct what are termed multiple mats or mattresses. The contract does not make provision for these specifically. They consist of one mattress imposed upon another, varying from two to as many as sixteen, according to the needs of the construction. They were built upon the deck of a barge especially prepared for the purpose, with facilities for sliding them from the deck into the positions desired. It is claimed by Carter and seems to be conceded that this method of planting the brush mats was found to be very desirable in order to prevent the undermining which preceded the laying of single mattresses or stone work. The scouring produced by the resistance of the single stone-loaded mats to the currents had a tendency to cause the currents to work around the outward end of the single mat and stone work and undermine it. By the use of the multiple mats, the construction proceeded so rapidly, and so affected the currents as to prevent the bottom wash, whereby a more even foundation and other good results were obtained. In addition, it seems, the single mats when separately

loaded with stone for ballast, were apt to sink into the soft bottom of the river—sometimes to a depth of seventy feet. By the use of multiple mats, it was possible to sink eight courses of mattresses with the same amount of stone as is required by the specification in sinking one mattress. Thus seven courses of stone were saved, while at the same time the construction was laid rapidly and made less liable to sink into the muddy and sandy bottom of the river. To build these multiple mattresses without making the openings between the different layers, too large, the double grillage was omitted from all the mattresses, excepting the lower side of the lower mattress and the top of the uppermost mattress. There would be only a half grillage between the intermediate tiers of fascines. The multiple mat was firmly bound together with wire and by other prescribed methods, so that the whole formed a compact body of large dimensions, often one hundred and more feet wide, and fifty feet long, weighing sometimes two hundred tons. The barge was then towed out to the place where the mat was to be placed, and, by means of a lowering adjustment located on the side of the barge next to the destined place, the mat was slid off into the water and into position, and weighted with stone sufficient to sink it and hold it in place. Complainant insists that thus a large saving was made to the contractors both in material and labor, in that they were saved the trouble of planting each mattress separately and the cost of the unused grillage poles. The saving in stone accrued to the government, except so far as it was otherwise expended, more particularly in paying for the extra fascine work. The use of multiple mats on the Savananh river work is warmly approved by most of the experts and is fully justified by the evidence. It is also clear that for the purposes of that work, it was desirable that the grillages be made single except at the bottom and on the top of the multiple mattresses. Carter testifies that he caused the contractors to increase the amount of fascines to make an equivalent of the omitted grillage poles. Col. Bixby was of the opinion that the contractors gained little or nothing by the use of multiple mats, and that the government was getting its work done at less expense. A number of witnesses testify that it was just as expensive to the contractor to handle and sink these heavy multiple mats as to sink them separately. It should be borne in mind that Greene & Gaynor would have made a very large profit on the omitted stone had it been used—as much as $275,000, it is estimated by

complainant's witnesses. Col. Handbury, Corps of Engineers, was of the opinion that Carter's change to multiple mats was within the specifications. Major Mahan, Col. Marshall, Col. Willard, Col. Rossell, Major Townsend, and Major Rees all assert the same. Some of them state that it was the duty of the engineer to resort to multiple mats under the terms of the contract, whenever that method became desirable. To the same effect is the testimony of a number of contractors. A number of bidders testify that they were advised that multiple mats might be used. It seems clear from the evidence that the introduction of multiple mats into the work on the Savannah harbor was judicious and essential. From the complainant's witness Cooper it appears that the eight course multiple mats stood twelve feet high when measured, just before they were put into position—or an average of one and one-half feet each. This was without the full grillage. In order to account for this height of the construction after eliminating one-half, at least of the grillage poles, it must be assumed that the reduction in height by reason of the omitted grillage poles, estimated by complainant to be equal to one course in each eight course mat of the third design, was compensated for by the addition of some element of the mat—presumably more fascines, as stated by Carter, Wisner, Schermerhorn, Burgwyn, and the employees of the contractor. Bulk for bulk, it appears that fascines were quite as valuable as grillage. Considering, therefore, this fact, and the further facts that there were considerable time and outlay involved in constructing the multiple mats, as well as great difficulty in handling them, especially in rough water; that some of the mats had to be transported many miles; that the mats measured up so well notwithstanding the pressure of the great weight imposed upon them, and the successful outcome of the construction, there seems to be little ground for questioning the good judgment and skill of the engineer in charge, in causing the mats to be put together and used in multiple form. Nor is it apparent that there was anything suspicious in his not insisting on a reduction in price per square yard, for mats laid in multiple form as against individual mats, provided they came up to the specifications.

At the time the investigation under Gillette began, the work under the 1892 contract in Savannah Harbor had been completed, and the Cumberland Sound 1896 contract was under way. As a consequence, it is not easy to ascertain just what was the construction of the mattresses, multiple and

single under the 1892 contract. It seems to be conceded, however, that, except for the fact that they contained something more of grillage, they were substantially the same as those of 1896 Cumberland Sound contract. There are several respects in which complainant insists the fascines failed to comply with the contract:

(1) They were accepted in lengths varying from 12′ to 18′ instead of 12′ to 100′, as required under the 1892 contract and 30′ to 100′ as required in the 1896 contract, according to Carter to facilitate hauling from camp to barge, saving to contractor 25% of cost.

(2) They were not well trimmed;

(3) They did not contain the quantity and quality of material required;

(4) They were not arranged and tied according to the specifications.

The specifications of the 1892 contract call for fascines from 12 to 100 feet in length: Those in the 1896 contract were required to be from 30 to 100 feet in length. In the mattress known as design No. 2, it is provided that the brush should be "carefully laid in the fascines, so as to break joints and to make a continuous fascine extending completely across the mattress." The clause is not repeated or referred to in the description of design No. 3, used by Carter in this work. For the Government, it is contended that it should be read into design No. 3. There does not appear in the evidence, any inherent reason why it should be required in the one and not in the other. Fascines 100 feet long could with difficulty be transported from the camp to the barge. Carter seems to have followed the wording of the 3rd design specifications in that respect. No continuous fascines were insisted on. His excuse is that he thereby hastened the work without injury to the government. Indeed it does not appear that continuous fascines added anything to the merits of the mats. On the other hand, it is claimed and with reason that the use of short fascines resulted in a saving of labor and trouble to the contractor. Under the circumstances, it cannot, however, be said to have been a departure from the contract such as would have enabled the engineer to require of the contractor a reduction in the price bid. It would seem that the use of the term "12 to 100 feet in length" should be construed as disclosing an intention to afford the engineer all the latitude reasonably to be required in the changing conditions of the work, between those extremes. That latitude might easily

be abused, but it is not per se evidence of a misuse of it, to waive the more expensive construction when no disadvantage would thereby accrue to the work in hand. Considerable discussion has arisen in the course of the hearing as to the fair construction to be placed upon the language:

"The brush used shall be as straight and well trimmed as can be obtained."

This sentence should be construed in connection with the first clause of the section of the contract in which it occurs, viz.:

"All fascines will be made of live brush of cedar, water oak, myrtle, sweet gum, or any other variety of wood approved by the engineer officer in charge."

The coast brush from which it was contemplated these fascines were to be made is shown by the evidence to be gnarly and otherwise difficult to reduce to symmetrical bundles. Ordinary military fascines, so-called, consisted of trimmed rods or poles so bound together as to constitute a compact bundle. There was no attempt on Carter's part, either in the specifications or practice, to require this class of fascines.

Complainant insists that Carter construed the same specifications to mean practically military fascines on the work let to Albert J. Twiggs July 5, 1893, for an improvement in Savannah River near Augusta, when he had permitted Walsh & Gaynor theretofore to use mere brush fascines in the same locality and that such discrimination worked great injury to him, Twiggs, and contributed to his failure on the job. Conant, the civil engineer in charge under the Twiggs construction, says he was told by Carter to apply a different rule to Greene & Gaynor's work on the coast under the 1892 contract (which he also had charge of) from that imposed upon Twiggs. He says the material growing near to and employed in making fascines in the vicinity of Augusta was small, clear and straight and required very little trimming. The fascines were used in constructing a spur-dam and in short protection. He was told by Carter that the up-river work required more wood and less fine material than that in the harbor, where it was designed to catch silt. He contradicts Twiggs' assertion that he, Twiggs, was in any way discriminated against. In this he is corroborated by Ford and Rees, inspectors upon this work. Twiggs had intended to be a bidder on a former contract, but took five hundred dollars and a promise from Gaynor, he says, that he should have the stone

work, and withdrew from the bidding. Afterwards, by reason of the substitution of fascines for stone, he got no benefit out of the stone work, and became embittered. He seems to have lacked both the capacity and the financial ability to handle a large contract. He claims that he refused an offer of $1,000 by Gaynor to withdraw from the list of bidders under the Augusta River improvement contract, which was awarded to him, and which, by reason of Carter's strict construction of the specifications, he was unable to complete. As above stated, Carter, Conant, Ford & Rees deny all oppression on Carter's part. General Craighill, Carter's superior officer, testified that the term "well trimmed" did not mean trimmed of all limbs, but suitably trimmed for the purposes for which it was to be used; that some places require one kind of fascines and some another kind; that where it was desirable to gather the silt, twigs, small limbs and even leaves should be left on.

"If it is to be a brush fascine, intended to be used as a part of a brush mattress," says Gen. Ludlow, "then the more leaves and twigs you have on, the better as long as it does not interfere with the choking. Well trimmed doesn't mean bare poles."

Col. Rossell says,

"To interpret the term 'well trimmed' it would be necessary to know for what purpose the fascine was to be used. It would have a different meaning in different cases."

Col. Marshall, Major Mahan, Col. Willard and Col. Handbury, testify that the term "well trimmed" includes fascines made of brush, limbs and twigs. Altogether, Major Townsend says, he would not consider it good engineering to remove the brush, twigs, and leaves on the Savannah Harbor work. This construction was placed upon the term on river improvement work at Rock Island. Major Rees says the term was always construed in the Savannah District by government employees to mean brush so trimmed that it would lie close and be bound into cylindrical shape with all the twigs, leaves and small brush retained. All of the foregoing nine officers were at the time their depositions were taken prominent in the Corps of Engineers of the United States. In corroboration of their testimony is that of J. H. Westerfield, civil engineer, who had charge of certain brush work on Savannah Harbor, under General Gillmore before Carter was assigned to that district, Schermerhorn, a civil engineer and competitor of Greene & Gaynor, L. E. Cooley, civil engineer, and E. A. Gieseler, as-

sistant engineer in local charge of the Savannah office. Cooper, one of complainant's principal witnesses, says:

"I consider the loose brush mat preferable to the military fascine for filling in."

Considering the character of the witnesses, whose testimony is referred to above, and their positive assertions, there is nothing in the record deemed sufficient to sustain the contention of the complainant that the specifications of the 1892 contract should be construed to mean military fascines, or bundles of rods or bare poles.

Whether in view of this holding, the fascines of the 1892 contract were well trimmed, will appear from a consideration of the quantity, arrangement, quality and binding of the materials used in the fascines. As above stated, there is not a great deal of evidence in the record as to the construction of the fascines used in the Savannah Harbor work under the 1892 contract. Assuming, however, that it was substantially the same as that supplied under the Cumberland Sound and Tybee Roads 1896 contracts, there yet remains in the great prolixity of the evidence on the subject, considerable uncertainty as to their makeup. It seems the bundles were built in as many different camps according to the supply of brush, and the testimony of the witnesses varies according to the different conditions obtaining at the several brush cutting places, as well as in the mental attitude of the various witnesses toward the defendant, Carter.

According to the testimony of Captain Gillette, who was Carter's successor and the prosecuting witness in the court-martial proceeding, and that of Arthur S. Cooper, civil engineer under Carter and Gillette on the works under consideration, Albert J. Twiggs, who accused Carter of unfair discrimination against him with reference to his Savannah River contract, Ernest B. Parker, carpenter and laborer generally, employed by Greene & Gaynor in charge of their mule lot, and later on a barge, Phillip Hopper, who cut brush for Greene & Gaynor from his father's land and the government reservation for two weeks and himself made bundles at four cents each, Frank DuBois, who cut brush and made bundles for the cost of the work from his own land, and O. C. Darling, from whose land brush was cut for the Cumberland Sound work, the mats then used were of very inferior construction, being filled up with all kinds of scrub growths, crooked limbs, straw, leaves and the like. Gillette's observation begins at a period some time subsequent to Carter's withdrawal and

has reference to only two or three mats. It is not contended that these objections applied to all the work. In the mats seen by Gillette, he says he could with difficulty discover any bundles or other bindings. The grillage poles were smaller than those called for in the specifications and much fewer in number. The mats were only eight feet high—one four foot bulk of brush imposed upon another of same height in such a manner as to form steps—the top one being 50 by 80 feet in area, and the lower one 50 by 100 feet. He estimates this construction cost the government $3,600, and that this price was grossly excessive; that the whole was very loosely put together with lath yarn, so that it spread out and looked like a rough bundle of tangled brush, not sufficiently solid to bear up the weight of a man attempting to walk over it. There is discernible some more zeal on Gillette's part than comports with an impartial investigation of his predecessor's transactions, which seems to have also had its effect upon those who were his subordinates at the time of taking their evidence. How far this has colored their testimony it is not easy now to determine. Were their evidence to obtain, the court must of necessity find that the defendant was faithless to his trust. On the other hand E. R. Conant, a civil engineer in charge of part of the work on Cumberlan Sound says that work had to be done with scraggy material from near the coast, and in that respect differed from the work near Augusta, Georgia, with which witness Twiggs compares it. General Craighill, former Chief of the Corps of Engineers, and who was Division Engineer for the Savannah District for a number of years, now retired, says he saw the mattresses used in Savannah River in March, 1893, and later from his own boat and on Cumberland Sound, and deemed them well adapted to the harbor work. He asserts that brush and leaves were more serviceable at catching and holding sediment than military fascines, i. e., those which are trimmed and consist of bundles of small stems or poles. He deemed Carter's work in Savannah River and Cumberland Sound most successful, judged by their results. Captain Gillette's successor, Colonel Quinn found Carter's work in Savannah Harbor in excellent condition as late as 1903. Colonel Bixby says the contractors used more material at Savannah and Cumberland Sound than was required of them by their contract. Colonels Rossell and Mahan say that the so-called military fascines would not have been permissible in the harbor work. Major Townsend says he was accustomed to construe the terms of the contract just

as Carter did; that he had used more than a million yards of brush mattress with the same specifications and had accepted material almost identical with that accepted by Carter in the big Savannah River contract, and that it was a wise move on Carter's part not to advertise for multiple mats because Gaynor owned a patent for such work. Major Rees and General Craighill find no fault with Carter's construction of the contract. Lyman E. Cooley, Wisner, Burgwyn, Schermerhorn, Blandford, Rutherford, Burnett, Brown, Ensey and Ford, all eminent civil engineers, testify that the work was done according to contract. Gieseler, an engineer in Gillette's employ, testified to the value of Carter's work, and was dropped from government employ shortly after so doing by Gillette. Bryan, a contractor, says the work was well done. Ely, a contractor, says Gillette threatened to injure his character, if he would not testify against Carter. The foregoing witnesses were either government engineers, or prominent civil engineers or contractors in competition with Greene & Gaynor, all of them men of standing and eminent in their line. As might be expected, they are not all advised in detail as to the work in question. They were, however, posted generally in regard to the construction and methods complained of, and are entitled to great consideration. It is an impressive fact in this case, that the defendant is so emphatically endorsed by these men who are above suspicion.

There are also some ad hominem considerations which may serve as makeweights in arriving at a just estimate of Carter's conduct. He withdrew from the charge of the work for the purpose of accepting a position of honor as military attache at the court of St. James and Army Engineer of the Nicaragua Canal Commission. There is nothing to indicate that he was forced to do so. Is it likely that he would have left matters in such shape as to put himself and his honor into the hands of his successor? And again, if he were conniving at personal profit, would he have naturally retired from the service in the face of the opportunity just at hand to reap large additional profits from the Cumberland Sound contract?

It is a difficult thing to arrive at a satisfactory conclusion of any construction after it is finished. To find fault with a great public work is not difficult—especially where the investigation is one-sided. The evidence leaves the court with the impression that there was carelessness in the manner in which some of the work was done, indeed carelessness for

which Carter was justly entitled to be criticized, but considering the material results, the magnitude of the work, and assuming the absence of any mercenary or other ulterior motive on Carter's part, except such as might be justly deduced from the facts so far considered, I am of the opinion, as was Senator Edmunds in the court-martial case, that Carter's course in the premises was not necessarily an abuse of the discretion vested in him, nor seriously inconsistent with his claim that he discharged his duty to the government, and that, limited as above stated, under the rule of evidence obtaining in such case, the government has failed to maintain its case.

It is, however, the contention of counsel for the government that the foregoing facts should be considered in their relation to the evidence introduced herein to support the charge that the moneys with which the securities and other property in suit were purchased were paid to Carter or to R. F. Westcott, his father-in-law for him, with his knowledge and connivance, by the contractors, as his proportion of the moneys by him fraudulently allowed to the contractors, as it is claimed, on said contracts, in excess of a fair and reasonable consideration for the work actually done by them under the several contracts in question. This evidence, in its present state, was not before Judge Edmunds when he reviewed the finding of the court-martial. It has been procured by the government attorney and expert through very great ingenuity and patience, with the result that counsel for Carter are forced to admit, or at least not to seriously controvert the fact, that large sums of money, in many instances corresponding in date and relative amount to the sums paid Greene & Gaynor from time to time upon their contracts, by Carter for the government, found their way into Westcott's bank accounts. In order to show a systematic course in the payment to Westcott of approximately one-third of the profits accruing to Greene & Gaynor upon said contract work after 1892 as they were received by them, the government's expert witness has in a number of instances forced balances and drawn strained conclusions, which might in a less conclusive showing, throw suspicion upon all his evidence on the subject, but the coincidences tending to identify moneys paid to the contractors with those in Westcott's bank accounts are, in the mind of the court, so conclusive, that the fact of such payments are beyond doubt as to a large number of the items. For Carter, it is asserted as above stated, that, if

Westcott had any interest in the several contracts in suit, Carter was never advised thereof, and never suspected it; that Westcott held him in tender regard as the surviving husband of his deceased daughter and lavished upon him large sums of money from his great wealth, and promised to make him his heir in place of his deceased daughter, Carter's late wife, and that, admitting the receipt by Westcott of large sums of money from Greene & Gaynor, a considerable part of the property in suit was not purchased with moneys derived from that source, or with any moneys which arose from any government contract; that when the securities were turned over to him by Westcott, he supposed Westcott was carrying out his promise to make him his beneficiary. There is no legal presumption here, that Carter knew what was going on and had been a party to it. The circumstances considered, however, he could hardly fail to charge himself, as he undertakes to do, with the task of explaining very many items shown in the accounts in evidence. It must be borne in mind that the transactions in suit covered the period from December, 1891, to 1897, during which period a number of contracts were let, and that even though Carter was not in actual conspiracy with the contractors, yet if he knew of their vast profits on the prices allowed them on the earlier work, it was his duty to investigate thoroughly the situation and see to it that the government thereafter paid no more than was fair and just. Even negligence under such circumstances would have amounted to fraud. If, therefore, Carter was cognizant of the fact that the contractors were reaping an abnormal profit from the 1892 work, and that Westcott was interested in that profit and was turning it over to him under any kind of a cover as and for his share of said profit, he was false to his trust, and should be held liable to make good to the government all the fruits of his fraudulent acts. This, of course, pre-supposes that such profits, if any, grew out of fraud upon the government in the matters of letting or executing the contracts in question, or both. If the government lost nothing by the transactions, there is nothing due it.

The evidence discloses a shameful course of treatment of the workmen employed by the contractors in cutting and otherwise handling the brush used in these constructions. They were paid little or nothing over and above their living, and that, too, of the worst. No doubt some shameful part of the profit reaped from these harbor constructions came in this

way. How much can never be ascertained. Certainly not all of it, nor even, relatively speaking, a considerable portion thereof. It is also claimed that some of the saving to the contractors arose from the fact that they or some of them claimed a patent or patents upon the methods for handling multiple mats. The record discloses no basis upon which to estimate that saving, if indeed, it resulted in any saving, so that it is without moment at this time. Undoubtedly, constructions of the character now involved, afford, when held down to a fair advance on actual cost, little or no inducement to contractors, because of the element of chance growing out of the weather and water conditions. Liberal allowance should, under the evidence, be made to cover such contingencies. But when all these considerations are borne in mind and given due weight, it is still beyond controversy from the record, that a great wrong was practiced upon the government by the contractors.

The evidence to be found in the record with regard to the financial transactions of Carter, Westcott, and the contractors, Greene & Gaynor, is both vast and intricate and entirely circumstantial. It has been read and re-read by the court, as presented in the briefs and depositions. To recite it here is of no value. Suffice it to say that without passing directly upon the questions as to whether Carter had actual knowledge of, and connived at, this raid upon the government, the facts brought out concerning these financial transactions are such that he must, as a conclusion of law be held chargeable with knowledge of what was being done in the premises. This fact alone makes it clear that the government is entitled to a decree awarding to it each and every of said pieces of property held by the receiver, which shall be found to have been purchased, directly or indirectly with moneys received by Westcott or anyone else or in any other way arising from funds made up of profits realized by the contractors under the contracts in suit. And it will be so ordered. In view of the prolixity of the evidence upon the subject of the moneys with which these securities and property were purchased, the court will not at this time dispose of that question, but leaves the matter temporarily with the respective counsel, to agree, if possible, upon a list of those securities and properties as to which, in view of the above finding, there is no contest, and also to come to a settlement of the whole matter, should

they be able to do so. To that end the further consideration of the cause is continued for thirty days.

Endorsement: Filed April 14, 1908, nunc pro tunc as of Jan. 9, 1908. H. S. Stoddard, Clerk.

EXHIBIT B.

Opinion of Court Handed Down March 17, 1908.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

United States of America
vs.
Oberlin M. Carter *et al.* } Gen. No. 25,980.

Kohlsaat, J.

In pursuance of the decree heretofore entered in this cause, the parties hereto have again presented to the Court their several arguments for the purpose of deducing from the evidence already before the Court, the facts with regard to the sources from which the several securities in the hands of the receivers, including the real estate, were derived. Defendant, in his answer, denies "that said Westcott delivered back any scurities to this defendant at any time, or that any of the securities described in said receipts of October 11, 1897, and October 29, 1897, ever belonged to this defendant, or that he ever had any interest therein, directly or indirectly, until the same were, respectively, given to this defendant as a pure and original donation by said Westcott at the time of said respective receipts in October, 1897." Speaking of the Orange, N. J. property, the answer proceeds to say that defendant's "sole and only interest in said property was received from his father-in-law, the late Robert F. Westcott, who gave him the only interest he ever had in said property as a pure and original donation, except that a part of the money given by said Westcott to this defendant's wife, may have been used to partly pay for said property. The answer makes no further allusion to the wife's estate. It is sought by the evidence to show that this estate amounted to $50,000—a gift from her father, R. F. Westcott, after her marriage with defendant. As further supporting this claim, it is shown that Westcott was a very wealthy man, and a

very active business man, prior to his retirement, sometime prior to 1897; that he had given one of his other daughters $70,000, and that Mrs. Carter was a favorite with him.

The Government insists that the attempt to introduce evidence as to this $50,000 gift to Mrs. Carter is inconsistent with the donation clause of the answer. Defendant replies that the father-in-law, at the time of the death of Mrs. Carter, resumed possession of her securities, saying that he would make it all right with him later; that he, Carter, was on most intimate terms with Westcott, and made no attempt to obstruct Westcott in handling he matter as he pleased. All this is of weight only as it may throw light upon the sources from which these securities were produced, Even if this gift to Mrs. Carter shall be deemed proven, it can avail defendant nothing, if in fact the money invested in them grew out of the Greene & Gaynor contracts.

In order to narrow the inquiry and abandon claim to securities which must, concededly, have been procured with funds growing out of these contracts, defendant limits his claim to those securities which were purchased with funds acquired previously to July, 1893, insisting that the evidence shows no moneys received by Westcott prior to that date. Complainant's Exhibit 319—Divisions 1 to 7, inclusive, cover this period. For convenience, these divisions will be considered in their order for the purpose of ascertaining where the money shown in each came from.

In Division One complainant's expert shows a number of disbursement checks issued by Carter to John F. Gaynor, between September 10, 1891, and December 1, 1891, aggregating a large sum. He then produces certain entries, two of December 18, 1891— one whereby Greene, Gaynor's partner, withdraws $1500 from the bank on that day and the other showing that Carter on that day deposited in his account $1400, also two of June 8, 1892, whereby it appears that on that day Greene withdrew $2500 from his bank and Westcott on the same day deposited to Carter's credit $2500. also three entries of July 22, 1892, whereby Gaynor withdrew from his bank $10,000, and Carter on the same day deposited $8,100 in his own account and $2,000 in Westcott's account, and also three entries on October 29, 1892, whereby it appears that Gaynor withdrew $2500 from his account on that day and Carter on the same day deposited to his wife's credit $2450. Of this latter sum, Mrs. Carter checked the sum of $2000 into Carter's account a few days later. It also appears that

Greene & Gaynor also severally withdrew other sums from their accounts about the same time, viz: On June 6, Gaynor, $2,575; on July 21, Greene, $11,000. At these particular dates, Greene & Gaynor had no government contracts on hand, and there is no reasonable theory upon which these payments can be held to have grown out of the contracts in question. They and one Hegeman were then partners in the construction of a railroad. Nothing appears in the record save the coincidences of amounts and dates aforesaid, upon which to make a finding against defendant as to these items. The coincidences are somewhat remarkable, although not exact in but one instance. They are suspicious, but, neither in and of themselves, nor in the light of subsequent transactions between the parties, can it be said that they in any way affect the government. Therefore, complainant's prayer as to them is denied, both in regard to the sources from which they were procured and as to the title to the securities in which they have been invested.

The Government's division No. 2 covers the period between January 3, 1893, and February 10, 1893. Defendant contends that up to January 30, 1893, one Anson M. Bangs was a partner of Greene & Gaynor. John F. Gaynor's testimony on that point is confused, but he finally and definitely asserts that Bangs had not been a partner since 1892. The proceedings had with reference to the formation of the corporation known as the Atlantic Contracting Company on July 22, 1892, is deemed satisfactorily corroborative of that fact.

From January 3, 1893, the Government claims begins the divisions of profits arising from the contracts under defendant's charge into thirds. In October two contracts were let, one being what is known as the Big Savannah Harbor contract. On January 3, 1893, Carter's four disbursing checks aggregating $65,632.62 were deposited to John F. Gaynor's account in a New York bank. The Government's expert deducts from this sum $26,932.62, being the amount at which Greene & Gaynor turned in their operating plant to the new corporation. He then divides the balance, $38,700.12) into thirds of $12,900 each. No withdrawal of even one-third from the accounts of either Greene or Gaynor is shown, but on the same day, January 3, 1893, there was deposited by Carter to his own credit in bank and with his broker $12,900. On that day other sums were withdrawn by Gaynor in such a manner as not to disclose the party to whom it was paid, if anybody. Defendant insists this $12,900 came from his wife's

estate. To the mind of the court, the co-incidence in date and amount is overwhelming, and the government's contention is held to be fully sustained to the effect that this sum was identical with the one-third. It may be as defendant insists; that it came as a part of his wife's estate, and was, as such, delivered to him by Westcott. Nevertheless, it came from the contracts, and belongs, together with the securities it represents, to complainant, in accordance with the former ruling of the court.

From Division Three, covering the period from February 10, 1893, to March 13, 1893, it appears that John F. Gaynor deposited in a New York bank, Carter's disbursing checks, aggregating $42,748.54 and his own check in the Savannah bank in which was carried the moneys to be expended upon the work, for $5,261.46 —presumably a sum in excess of what was required for that purpose. These aggregated $48,000. one-third of which is $16,000. On the same day defendant deposited with his brokers and in bank $15,850.00. This sum he also claims as part of his wife's estate, received from Westcott. Taking into consideration the facts of Division Two, together with the coincidence, it is deemed clear that the $15,850 was a part of the $16,000 paid out by Gaynor on February 10, 1893, to some unknown persons. So that, whether received through Westcott or otherwise, it was Government money, as are the securities into which it was paid. The original money involved, may, as claimed by defendant, have been received by Westcott from some other source. If so, it is satisfactorily shown that later, the Greene & Gaynor funds were substituted therefor, so that the Government's claim attaches in any event.

Division Four, covering the period between March 13, 1893, and April 14, 1893, shows Carter's disbursing checks aggregating $47,805.11 deposited in a New York bank on March 13, 1893, together with Gaynor's check on a Savannah bank for $194.89—the whole aggregating $48,000. One-third of this is $16,000. On March 6, 1893, Gaynor withdrew $6,500 cash from the same bank. On March, 1893, he likewise withdew $2,500 cash and on March 13, 1893, $7,000 cash—all from the same bank. All the amounts withdrawn and called in question in these accounts were cash. The only deposit in Carter's account shown, is that of March 14, 1893, $7,000. That is, only the last one, March 13, 1893, of Gaynor's withdrawals from his bank, reappears at once in Carter's account. The three amounts withdrawn by Gaynor aggregate just $16,-

000, $9,000 of which was withdrawn several days before the disbursing checks seem to have been deposited. An examination of Divisions 3 and 4 shows that Greene & Gaynor each received one-third of $16,000 on each of said divisions, although Greene's share was paid to him in one lump sum of $32,000, March 13, 1893. From this it seems evident that these two sums of $48,000 each represented profits, and that some one received the other third, aggregating $32,000. From Divisions Two and Three it is claimed to be proven that either Westcott or Carter was receiving one-third of the profits. Complainant argues from this that a system of division is established, whereby Westcott or Carter should be charged with having received the full sum of $16,000 on this 4th Division, notwithstanding only $7,000 is traced into either of their bank accounts. In support of this contention, it is shown that Carter rented a deposit box at about this time. In Wharton's Criminal Evidence, Sec. 38, it is said:

"When the object is to show system, subsequent as well as prior offenses when tending to establish identity or intent, can be put in evidence. The question is one of induction, and the larger the number of consistent facts the more complete the induction is."

There is, however, something of certainty lacking in the evidence as to the $9,000. It seems to be fairly well established that Westcott was a partner of Greene & Gaynor, or at least interested in the profits of the contracts. The Government insists that even if he was, he was serving Carter's interests in that connection, and that under the rule stated he can be charged with the whole $16,000 of the Fourth Division. There is no system claimed for the dealings between Carter and Westcott. If, as a matter of fact, Carter never received this $9,000, and no part thereof was invested in the securities before the Court, then Carter can, at the most, be held only for this sum on a money judgment. There is no direct evidence that either he or Westcott ever had this sum. Carter did have on deposit at Savannah some $1,542.14 and he purchased $500 exchange, all about March 4th to 9th, 1893. But, considering the withdrawal by Gaynor of the $9,000 several days prior to the deposit of the $48,000 in the New York bank, together with the other facts in the case, the proof is not sufficient to enable the Court to find that this sum of $9,000 ever came into Carter's or Westcott's possession, or that he should be charged therewith.

The transactions of Division Five cover the time between

April 13, 1893, and May 8, 1893. On April 14, 1893, disbursing checks aggregating $62,154.34 were deposited in a New York bank by J. F. Gaynor. One-third of this sum is $20,718.11. Between April 14 and April 20, 1893, money in excess of $20,718.11 was withdrawn by Gaynor from said bank. On April 14, 1893, $400, and April 15, $3,000 in bills were deposited to Carter's credit. On April 14, 1893, the sum of $14,500 was deposited to Westcott's account in the same bank. On the same day Westcott deposited $14,742.64 to Carter's credit with brokers. There is no evidence to show that more than $18,142 (including the $242.00 from Westcott) came to Carter's hands from any outside source on or about April 14, 1893. It is in evidence that he visited his two safety deposit boxes at that time, in which boxes he could, of course, have placed currency. However, giving all the weight to complainant's evidence to which it can lay claim, the court is of the opinion that there is nothing in the record which would justify it in charging Carter, or Westcott, or both of them, with having received from this division a sum in excess of $17,900.

Division Six extends from May 8, 1893, to June 5, 1893. On May 8, 1893, J. F. Gaynor deposited Carter's disbursing checks aggregating $40,281.60, and his own check in a Savannah bank for $4,718.40, in a New York bank, making in all $45,000: One-third of this is $15,000. On the same day Gaynor withdrew in cash $7,640, and Greene, from his own account, withdrew $7,360.00, making $15,000. On May 13, 1893, Westcott made deposits aggregating $3,500, leaving $11,500.00 unaccounted for. Complainant undertakes to follow this $11,500 into certain transactions of Westcott's had on May 23, 1893. To make the figures come out right, the expert injects an item: "Unaccounted for $100.00" into some transactions of Westcott's of May 23, 1893. On that day Westcott deposited $26,600.00. There is no pretense but that Westcott was handling large sums of his own. While there may be a presumption that he looked after his one-third, that presumption cannot be carried too far. There is no just ground upon which to hold that the $11,500.00 ever came into Westcott's or Carter's hands, and, therefore, neither of them can be charged with it.

Division Seven covers the period between June 5, 1893, and July 11, 1893. On June 5, 1893, Carter's disbursing check for $42,150.00 was deposited in a New York bank to the credit of Greene. From this sum the Government deducts an

arbitrary allowance for some supposed expenditure of $150 and also $4,500.00 sent to Savannah, leaving $37,500, as alleged, for distribution. One-third of this sum would be $12,500. On June 5 and 6 Greene withdrew some $14,500 in cash and on June 17, 1893, Greene's check for $12,500 to W. T. Gaynor was cashed. On June 6, 1893, Westcott deposited $12,500 with his brokers. There remains no doubt in the mind of the Court but that this money arose from the contracts with Greene & Gaynor and must, therefore, be accounted for to the government in this proceeding.

It thus appears that of the $109,568.15 claimed by the government, as shown in Divisions One to Seven, inclusive, aforesaid, the evidence fails to support the claim as to $39,768.11 thereof.

And on to-wit: the 21st day of March, 1908, in the December term, 1907, of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat, judge presiding, there was made by the Court, the following decree and entry thereof:

DECREE OF MARCH 21, 1908.

United States
vs.
Oberlin M. Carter, *et al.* } Bill No. 25980.

Pending in Northern District of Illinois, and Auxiliary Bills pending in Southern District of New York, District of New Jersey, Southern District of West Virginia, Southern District of Illinois, Southern District of Georgia.

Decree.

The above stated cause came on to be heard upon the pleadings and proofs and was argued by counsel, whereupon it is considered, adjudged, ordered and decreed by the Court as follows:

(1)

That all moneys in any way arising from the profits realized by the contractors under the River and Harbor contracts described in the bill and auxiliary bills in this case, constitute

a trust fund, and that all of the same, with the investments, proceeds, re-investments and income thereof constitutes a trust fund which in equity and good conscience is for the benefit of and belongs to the complainant, and that no part of said money so arising, or the investments, proceeds, re-investments, or income thereof, can be held by the defendant, Oberlin M. Carter, as against the complainant, or by any one not a bona fide purchaser for value without notice holding under or through Robert F. Westcott or Oberlin M. Carter.

(2)

It is further adjudged, ordered and decreed that the following securities now in the hands of the receivers under the bill and auxiliary bills aforesaid, were not purchased with said trust fund, but with the private funds of Robert F. Westcott and Oberlin M. Carter:

5 Chesapeake & Ohio 5% bonds purchased Feb. 11, 1893, No. 21025 to 21029, cost $5,275.00

5 Chicago, St. P. M. & Omaha 6% bonds purchased Apr. 11, 1893, No. 20242, 15926, 19282, 16101, 16672, cost $6,143.75

5 Chicago, St. P. M. & Omaha 6% bonds purchased Apr. 28, 1893, No. 2093, 21116 to 21118 and 21123, cost $6,102.25

5 Chesapeake & Ohio 4½% bonds purchased Apr. 11, 1900, No. 24871 to 24875 cost $4,993.75

(Said 5 C. & O. 4½% bonds being in lieu of 5 Wabash 1st Mort., 5% bonds No. 16135 to 16138 and 16140, originally purchased by R. F. Westcott Jan. 20, 1890, held not to be traced to the trust fund and which went into the Orange, N. J., investment, and is represented by an equivalent amount of cash, paid over to J. H. Paul, for O. M. Carter in the partition of said Orange, N. J., property and invested by J. H. Paul in bonds)

15 shares Savannah Lighterage & Transfer Company stock, par value $1,500.00

1 share Greenwich Park Association, par value 100.00

25 shares Seaboard Company stock, par value 2,500.00

100 shares Savannah Tow Boat Co. stock (Certificates Nos. 56, 81, 113, 123, 133, 145, 152, 170 and 217) par value 10,000.00

5 shares Savannah Cotton Mill stock, par value 500.00

And all of the said assets in this paragraph described, together with the income and proceeds thereof which have been collected by the receivers, are held to be the property of Oberlin M. Carter, and not to have been derived from the said trust fund.

(3)

It is further adjudged, ordered and decreed, that with the exception of the securities described in the paragraph of this decree numbered "(2)" that all the following described properties and assets, are traced from and held to be investments or re-investments of the trust fund, referred to in the paragraph of this decree numbered "(1)" and arising from the profits of the River and Harbor contracts referred to therein, to wit:

(a) Bonds of the par value of $63,000.00 received by Oberlin M. Carter from Robert F. Westcott on October 11, 1897, and described in the original receipt therefor given by said Carter to said Westcott, a copy of which is hereto attached and marked Exhibit B.

(b) Bonds of the par value of $222,000.00 and also all stocks, receiver's certificates, notes and choses in action represented by deeds or mortgages, being the properties received by said Oberlin M. Carter from Robert F. Westcott on October 29, 1897, and said properties being more particularly described or referred to in the original receipt therefor given by said Oberlin M. Carter to said Robert F. Westcott, a copy of which is hereto attached and marked Exhibit C. (In the said receipt of October 29, 1897 one Chicago St. Paul, Minn., & Omaha bond No. 16101 is erroneously described as No. 16102, and one Wabash, Detroit & Chicago bond No. 1737 is erroneously described as 1731, and the description in said receipt is to be taken as corrected accordingly).

(c) And also the real estate described in the deed dated November 27, 1894 from Howie & Bragg, Executors, to Robert F. Westcott, and which was conveyed by said Robert F. Westcott to Oberlin M. Carter by deed executed January 17, 1895, and described in the bill as the 8th Avenue, New York, property.

(d) And also the interest in the Orange, New Jersey, property conveyed by Robert F. Westcott to Oberlin M. Carter, by deed dated January 25, 1897, Exhibit No. 427 in evidence, and all interest in the improvements thereon made, constituing what is described in the settlement agreement made between

Robert F. Westcott and Oberlin M. Carter dated October 29, 1897, (Exhibit 283 in evidence) as the individual half interest of Oberlin M. Carter therein;

(e) And also 100 shares of Hunting Island or Port of Savannah stock—

25 shares of Savannah Brewing Company stock, Certificates No. 431 and 467,

50 shares Savannah Towboat Company stock, Certificates No. 235, 242 and 244,

50 shares of Brush Electric and Power Company stock,

And an equitable interest in Life Insurance Policy No. 743543 on the life of O. M. Carter in the Equitable Assurance Society of New York represented by the premiums paid thereon:

And all of said above described properties (with the exception of those described in paragraph of this Decree numbered "(2)" as aforesaid, with the proceeds and reinvestments thereof are decreed to constitute a part of the trust fund belonging to complainant.

(4)

And it is further adjudged, ordered and decreed, that all assets which went into the hands of the receivers in this and the auxiliary causes, other than those described in the paragraph of this decree numbered "(2)" are investments, and re-investments, and proceeds, of a part of the said trust funds and that the same, together with the income and proceeds thereof, which have been collected by the receivers, constitute a trust fund belonging to the complainant.

The assets which went into the hands of the receivers, belonging to complainant, aggregating at cost or proceeds, the sum of $367,822.71, and the said assets being more particularly described in Exhibit A attached to this decree, and made a part hereof.

(5)

It is further ordered and decreed that unless the said Oberlin M. Carter shall elect to make good to the complainant from the fund in Court decreed to be his, or by payment otherwise, the surrender value of the said life insurance policy number 743543, on the life of Oberlin M. Carter, in the Equitable Life Assurance Company of New York, to be fixed by the said Assurance Company, he shall within thirty days from the date of this decree make over and assign said life insur-

ance policy to Frank W. Hubby, the receiver under the auxiliary bill in New York. If said surrender value is so made good, the policy shall belong to Oberlin M. Carter, otherwise to the Complainant.

(6)

It is further ordered and decreed that the said I. Stanton Carter and L. D. Carter, having executed deeds of conveyance conveying to Frank W. Hubby, receiver under said auxiliary bills in New York and New Jersey the property described in the bill as the 8th Avenue, New York, property, and the Orange, New Jersey, property, and said deeds of conveyance having been left with Max H. Whitney, receiver in this cause in escrow to abide the decree in this cause, it is now decreed that said deeds be delivered up to said Hubby, receiver, free from all claims of said I. Stanton Carter and L. D. Carter and O. M. Carter, in, of, or to said properties described in said deeds.

(7)

It is further ordered and decreed that the fixing of the costs and expenses of this proceeding, including allowance to be made to receivers, and to counsel, and the charges which may be allowed under the agreement of parties of November 6, 1901, is reserved at the foot of this decree, to be adjudged and passed on by the court.

(8)

It is further ordered and decreed that the conversion of the assets in Court into money so that the same may be disposed of in accordance with the rights of the parties as herein decreed, is reserved at the foot of this decree.

(9)

It being provided in the fourth clause of the stipulation of the parties dated Nov. 6, 1901, that:

"L. D. Carter and I. Stanton Carter will forthwith dismiss their demurrers, and file answers disclaiming any personal interest in the aforesaid assets in controversy in this litigation, including the real estate on Eighth Avenue, New York, and at Orange, New Jersey, except as to two bonds claimed by I. S. Carter."

And the issue as to whether the said two bonds were purchased from the trust fund, being left in the stipulation to the determination of the Court, and the finding of the special Master approved by the Court, being that the said two bonds were purchased with the trust funds, it is adjudged and decreed that all liens or claims made by L. D. Carter or I. S. Carter as against any of the assets hereinbefore awarded the complainant are denied.

(10)

It is further adjudged, ordered and decreed that the claim of the Complainant to have a deficiency judgment against L. D. Carter is denied.

(11)

It is further adjudged, ordered and decreed that the claim of the complainant to have a deficiency judgment against Oberlin M. Carter for so much of the proceeds arising from the trust fund, as it is claimed was dissipated by Oberlin M. Carter, or his agents prior to the agreement of November 6, 1901, is denied.

(12)

It is further adjudged, ordered and decreed that the said United States do have and recover of and against the defendant, I. Stanton Carter, the sum of Eleven Thousand, Four Hundred and Fifty-four Dollars and eighteen cents ($11,454.18) for the amount of the said trust fund, not accounted for by him as found by the special master.

(13)

The right of the complainant to recover from such agents of said Oberlin M. Carter, (not parties to the suit in this district), such of the assets or proceeds of assets constituting any part of the trust fund which may have been diverted by them and not included in the assets brought into the hands of the receivers, or to recover a deficiency judgment against them therefor is not passed upon herein, the same not being within the jurisdiction of this court.

EXHIBIT A TO THE DECREE.

DESCRIPTION OF ASSETS WHICH WENT INTO THE HANDS OF RECEIVERS UNDER THE BILL AND AUXILIARY BILLS, IN THE SEVERAL DISTRICTS, DECREED TO BELONG TO THE UNITED STATES.

SOUTHERN DISTRICT OF WEST VIRGINIA.

G. A. NORTHCOTT, RECEIVER.

Taken possession of by Receiver or held up under notice.

1901					
Sept. 16	Proceeds of Securities Sold by Ditson P. Carter, as follows:			Original Cost	Cash
	15 M. Delaware & Hudson 7% Bonds Nos. 82/83, 293, 528, 593, 840/842, 1648/1649, 121/125 *Proceeds*	$21,318.75			
	30 M. New York, Lackawana & Western 6% Bonds Nos. 11301/11315, 8535/8537, 9494/9500, 11346/11350 *Proceeds*	39,818.75			
	5 M. Wabash, Detroit & Chicago Ex. 5% Bonds Nos. 1621, 1736/1739 *Proceeds*	5,418.75			
	50 M. Long Dock 1st Mortgage 6% Bonds Nos. 2601/2618, 2689/2700, 180/183, 802/803, 2201/2202, 3602/3611, 2836/37 *Proceeds*	67,000.00			
	10 M. Morris & Essex 1st Mortgage 7% Bonds Nos. 2983, 8109/8114, 9307/9308, 1495. *Proceeds*	13,345.83			
		$146,902.08			
	Interest	280.00			
		147,182.08			
	Less amount not taken possession of by Receiver	5,900.00			
	Net amount taken possession of by Receiver	$141282.08			
	Received from D.P. Carter, viz.: *Cash*	$121282.08			
	2 Certificates of Deposit of the Kanawa Valley Bank of Charleston West Va. Nos. 20048 and 20049 for $10.000 each. *Part of Proceeds*	20,000.00			
			$141,282.08		$141,282.08
	THE FOLLOWING SECURITIES WERE ALSO RECEIVED FROM DITSON P. CARTER				
*	300 Shares Baltimore & Ohio Preferred Stock Nos. 8247, 8349, 8411. *Par Value*		30,000.00	24,975.00	
*	100 Shares Hocking Preferred Stock No. C-1389. *Par Value*		10,000.00	6,789.50	

* Note 300 Shares of Baltimore & Ohio Pfd. Stock and 100 Shares Hocking Valley Pfd. Stock had been held up by the Receiver under suit in Southern District of New York, the Certificates for same were afterwards taken possession of by the Receiver under the bill in West Virginia.

EXHIBIT A TO THE DECREE.
SOUTHERN DISTRICT OF NEW YORK.
FRANK W. HUBBY, JR., RECEIVER.
Taken possession of by Receiver or held up under Notice.

		Original Cost	Cash
Certain Real Estate known as "Eighth Avenue Property" Situate No. 286, 8th Avenue, New York City.			
Cost Price	$39,813.75		
This property was subject to a Mortgage executed by O. M. Carter to the American Mtge. Co. of N. Y., under date of Oct. 8, 1900 for	$23,000		
(This Mortgage subsequently paid off by Hubby, Receiver)		$16,813.75	$16,813.75
CASH RECEIVED FROM J. H. PAUL. For dividends collected by J. H. Paul, viz.:			
Sept. 1901, Dividend on 200 Shares Baltimore & Ohio Pfd. Stock	$600		
July, 1901, Dividend on 100 Shares Hocking Valley, Pfd. Stock	200		
Cash		800	800
CASH RECEIVED FROM MUTUAL LIFE INSURANCE CO., OF N. Y. on policy on life of Beirne Gordon, held as Collateral to Beirne Gordon Notes, collected by F. W. Hubby, Jr., Receiver, under decree in New York Suit—			
Cash		5,437.63	5,437.63
(For balance of collection on Beirne Gordon Notes see post 4, Southern Dist. of Ga.)			
HELD UP BY NOTICE OF HUBBY, RECEIVER, TO INSURANCE CO. Life insurance policy No. 743,543 of the Equitable Life Assurance Society of New York on the Life of Oberlin M. Carter, for $10,000. (15 annual payment $453. each).			
1st Premium	$ 453 See Ex. 319 Div. 28/30		
2nd. "	453 " " " " 31		
3rd "	453 " " " " 31		
	$1,359	1,359	1,359
The Subsequent Premiums on this Policy were paid from the Trust Fund, viz.:			
4th Prem by John H. Paul	$ 453.	June 28, 1898, Exh. No. 406	
5th " " O. M. Carter	453.	" 6, 1899 " " 597	
6th " " John H. Paul	453.	" 30, 1900 " " 408	
7th " " I. S. Carter	453.	" 7, 1901, Def. 6 & 40 Booth	
8th " " L. D. Carter	453.	" 7, 1902, Def. 6 & 9 Booth	
9th " " M. H. Whitney, Receiver	453.	" 17, 1903, Receivers Report.	
10th " " " " "	453	Sept. 1, 1904 " "	
11th " " F. W. Hubby, Jr. "	453.	June 2, 1905, " "	
12th " " " " "	453	" 6, 1906, " "	
13th " " " " "	453.	" 5, 1907, " "	
	$4,530.		

EXHIBIT A TO THE DECREE.
DISTRICT OF NEW JERSEY.
FRANK W. HUBBY, JR., RECEIVER.
Taken possession of by Receiver or held up under Notice.

		Original Cost
1901.		
July 30	Certain Real Estate known as "Orange, New Jersey Property."	
	Situate in Orange, New Jersey.	
	Viz.:	
	1 House and Land No. 136 Highland Avenue —	
	1 House and Land " 150 " " ...	
	1 House and Land " 152 " "	
	1 House and Land " 154 " "	
	(See Exhibit 283) *Cost* $63,020.35	
	$2,500.	
	Nov. 6, 1899 (thro J. H. Paul....7,953.22	
	Less.....$10,453.22	
	Net Cost of Property..... $52,567.13	$52,567.13

EXHIBIT A TO THE DECREE.
SOUTHERN DISTRICT OF GEORGIA.
ALBERT WYLLY, AGT. FOR MAX H. WHITNEY, RECEIVER.
Taken possession of by Receiver or held up under Notice.

			Original Cost	Cash
1901				
Dec. 7	*Securities received from W. W. Mackall, Atty. for Oberlin M. Carter, viz.*			
	25 Shares Savannah Brewing Co. Stock Certificates 431 and 467, *Par Value*.....	$2,500	$2,188.50	
	Shares Savannah Tow Boat Co. Stock Certificates Nos. 235, 242 and 244 amounting to 50 Shares— *Par Value*.....	5,000	5,000	
1902				
Feby. 15	100 Shares Hunting Island or Port Savannah Co. Stock. Par Value.....$10,000		5,700.66	
	Collection February 15, 1902, by Receiver Proceeds from J. K. Garnett.....	6,500		6,500
1902				
Feby. 5	Note of Beirne Gordon dated Nov. 4, 1896, Face Value.....$10,000		10,000	
	Interest Note of Beirne Gordon dated Nov. 4, 1896, Face Value..... 300			
	Interest Note of Beirne Gordon dated Nov. 4, 1896, Face Value..... 300			
	Collection February 5, 1902, by Receiver. (For balance of collection of Beirne Gordon Notes see Ante Sheet No. 2, collection in New York.)	4,884.33		4,884.33
1902				
Feby. 15	Note of Thomas Martin dated Nov. 8, 1895, Face Value.....$6,000		6,000	
	Collection February 15, 1902, Proceeds and Interest.....	8,284.03		8,284.03

EXHIBIT A TO THE DECREE.
NORTHERN DISTRICT OF ILLINOIS.
MAX H. WHITNEY, RECEIVER.
Taken possession of by Receiver or held up under Notice.

			Original Cost
1901			
Nov. 11	SECURITIES RECEIVED FROM I. STANTON CARTER, VIZ.:		
	10M Missouri Pacific 6% 1st Consolidated 1920 Bonds Nos. 1017, 4452, 4940, 5147, 6690, 7129, 7608/7610, 13684. *Par Value*	10,000	11,396.25
	10M General Reading R. R. 4% 1997 Bonds Nos. 51900/51902, 7054/7060. *Par Value*	10,000	8,703.75
	10M Wabash R. R. Seconds 5% 1939 Bonds Nos. 252, 468, 536, 642, 1411/1412, 1455, 1621, 6563, 10749. *Par Value*	10,000	10,357.50
	10M Peoria and East Illinois Consolidated 4%, 1940 Bonds. Nos. 253, 1415, 1702, 6625/6626, 6771/6773, 6776/6777. *Par Value*	10,000	9,012.50
	10M Chesapeake & Ohio Gen. 4½% 1992 Bonds. Nos. 2140, 2153, 2154, 8929, 17445, 17735, 18128, 24358, 24776, 24777. *Par Value*	10,000	9,987.50
	5M Hocking Valley 1st Consolidated Gen. 4½% 1999 Bonds. Nos. 4757/4761. *Par Value*	5,000	4,987.50
	Note of C. W. Colehour dated Chicago, Ill., Oct. 17, 1901, and due on or before 2 years after date. Secured by assignment of judgment in favor of C. W. Colehour, in case Colehour vs. Roby, Circuit Court of Cook County, Illinois. *Face Value*	11,660	11,000
	CASH RECEIVED FROM N. W. HARRIS & CO., CHICAGO, ILLINOIS: The balance to the credit of I. Stanton Carter on their books from Trust Fund. *Cash*	770.40	
1903			
March 13	SECURITIES RECEIVED FROM JOSEPH H. WINKLER THROUGH H. G. STONE ON BEHALF OF LORENZO D. CARTER.		
	10M Kentucky Central 4% 1997 Bonds Nos. 3789/3798. *Par Value*	10,000	9,944.93
1904			
Jan. 8	SECURITIES RECEIVED FROM I. STANTON CARTER, VIZ.:		
	1M Kentucky Central 4% 1997 Bond No. 5119. *Par Value*	1,000	997.56
	1 Certificate of Deposit No. 1057, of Old Colony Trust Co., Boston, Mass., for 1 Michigan Telephone Co. 5% Bond No. 2472. *Par Value*	1,000	1,019.45
1904			
Jan. 13	SECURITIES RECEIVED FROM JOSEPH H. WINKLER, ATTORNEY FOR LORENZO D. CARTER.		
	11M Kentucky Central 4% 1997 Bonds Nos. 3776, 3782/3788, 5960, 5961, 5964 *Par Value*	11,000	10,939.42

EXHIBIT A TO THE DECREE.
NORTHERN DISTRICT OF ILLINOIS—(Continued).
MAX H. WHITNEY, RECEIVER.
Taken possession of by Receiver or held up under Notice.

1904			Cash
Jan. 15	CASH RECEIVED THROUGH H. G. STONE, ATTORNEY FOR LORENZO D. CARTER, VIZ.:		
	For Coupons collected on 10M Kentucky Central 4% 1997 Bonds due Jany, 1902, July 1902, and Jany. 1903, 30 Coupons @ $20. *Cash*.....	600	600
	(The Bonds were turned over to Receiver Mch 13, 1903)		
	For Coupons collected on 11M Kentucky Central 4% 1997 Bonds due Jany, 1902, July, 1902, Jany, 1903, July 1903 and Jany, 1904— 55 Coupons @ $20. *Cash*.....	1,100	1,100
	(The Bonds were turned over to Receiver Jany 13, 1904.)		
	CASH RECEIVED THROUGH H. G. STONE, ATTORNEY FOR I. STANTON CARTER, VIZ.:		
	For Coupons collected on 1M Kentucky Central 4% 1997 Bond due Jany, 1902, July, 1902, Jany, 1903, July, 1903, and Jany, 1904, 5 Coupons @ $20. *Cash* ...	100	100
	(This Bond was turned over to Receiver Jany 8, 1904.)		
	For Coupon Collected on 1 Michigan Telephone Co., 5% Bond due January, 1902, 1 Coupon @ $25. *Cash*....	25	25
	(This Bond was turned over to Receiver Jany 8, 1904.)		

EXHIBIT "B." (TO THE DECREE.)

The October 11, 1897, Receipt, Carter to Westcott. Complainant's Exhibit 269.

Received New York October 11, 1897, from R. F. Westcott the following bonds, sixty-three in all:

13 U. S. 5's	34454, 34479, 34478, 34477, 34452, 34455, 55167, 34480, 34481, 34482, 34483, 34450, 34449.
10 Mil. & St. P. 8s	668, 2369, 3174, 3246, 3599, 2207, 2196, 2115, 2100, 1324.
5 Jol. & N. Ind. 7s	318, 319, 320, 321, 322.
15 N. Y. Cent. 7s	15755, 13194, 13193, 09472, 07905, 07904, 06328, 06327, 15759, 15758, 15757, 15756, 07903, 07902, 07901.
20 Lake Shore Seconds 7s	10605, 10604, 10563, 10562, 10561, 10560, 10460, 10459, 10458, 10457, 8466, 8465, 6746, 6745, 6744, 1817, 1813, 1810, 1567, 1568.

O. M. CARTER

EXHIBIT "C." (TO THE DECREE.)

October 29, 1897, Receipt of Carter to Westcott, Complainant's Exhibit 272.

Received, New York, October 29, 1897, from R. F. Westcott, the following instruments:

5 Ches. & Ohio 5s	21025, 21026, 21027, 21028, 21029, Last Coupon Nov. 1897.
15 Del. & Hud. 7s	1649, 1648, 841, 528, 293, 122, 842, 840, 593, 125, 124, 123, 121, 83, 82. Last coupon Sept. 1897.
10 Chic., St. P., Minn. & Om. 6s	21117, 21118, 21123, 21116, 20242, 19282, 16672, 16102, 15926, 2093, Last Coupon Dec. '97.

15 Chi. & N. W. 7s	13216, 13213, 13212, 13211, 13209, 13210, 13208, 13207, 13206, 13205, 7527, 7526, 7525, 7524, 7523, Last Coupon Nov. 1897.
30 United N. J. 4s	8650, 8651, 8652, 8653, 8654, 8655, 8656, 8657, 8658, 8659. Last coupon Sept. 1897. 17312, 17313, 17314, 17315, 17316, 17396, 17397, 17398, 17399, 17400, 18442, 18443, 18444, 18445, 19179, 19186, 19397, 19398, 19399, 19400, Last coupon Sept. 1897.
10 Mil. Lake Sh. & West 6s	697, 698, 699, 845, 844, 843, 847, 846, 848, 839. Last coupon Nov. 1897.
50 Long Dock 6s	2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2689, 2690, 2691, 2692, 2693, 2695, 2696, 2697, 2698, 2699, 2700, 3611, 3610, 3609, 3608, 3607, 3606, 3605, 3604, 3603, 3602, 2202, 2201, 803, 802, 183, 182, 181, 180, 2837, 2836, 2694. Last coupon October, 1897.
30 N. Y. Lack. & West. 6s	11350, 11349, 11348, 11347, 11346, 11310, 11309, 11308, 11307, 11306, 11315, 11314, 11313, 11312, 11311, 11305, 11304, 11303, 11302, 11301, 9500, 9499, 9498, 9497, 9496, 9495, 9494, 8537, 8536, 8535, Last coupon Jan., 1898. (O. M. C.)
5 N. J. Junc. 4s	940, 941, 1256, 1258, 1489. Last coupon Feb. 1898.

20 N. Y. Lack & West. 5s 1036, 1037, 1044, 1045, 1038, 1171, 1172, 1039, 1173, 1174, 1040, 1175, 1176, 1041, 1177, 1042, 1178, 1179, 1043, 1180. Last coupon Feb. 1898.

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10 Morris & Essex 7s 8114, 8113, 8112, 8111, 8110, 8109, 2983, 1495, 9308, 9307. Last coupon Dec. 1897.

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3 Morris & Essex 4 1/2s 848, 1120, 1121. Last coupon Jan. 1898.

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5 Wabash D. & C. 5s 1739, 1621, 1736, 1731, 1738. Last coupon July, 1897.

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10 Chi. Mil. & St. P. 7s 5447, 5446, 5445, 5444, 6318, 5440, 525, 5441, 5442, 5443. Last coupon Jan. 1898.

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4 U. S. 5s 17461, 17458, 17456, 17453. Last coupon Nov. 1897.

2 Certificates for 100 shares each in capital stock of Del. & Hudson Canal Co. Nos. 25868, 25869, in my name.

2 Receivers Certificates B. & O. R. R. Co. for $5,000.00 each, Nos. 791 & 792. Coupons Dec. 1, 1897, attached.

7 Promissory notes of T. M. Cunningham to Robert F. Westcott for $275.00 each, dated June 29, 1895. Endorsed "without recourse" by Robt. F. Westcott.

Deed to secure foregoing notes and others by T. M. Cunningham to Robert F. Westcott, dated June 29th, 1895.

1 Promissory note of Beirne Gordon to R. F. Westcott for $10,000.00, and

9 Promissory notes of same to same for $300.00 each, all of said notes being dated Nov. 4th, 1896, and endorsed "without recourse" by R. F. Westcott.

Deed, Beirne Gordon to R. F. Westcott, dated Nov. 4th, 1896, to secure foregoing notes and others.

1 Promissory note of John Lyons to Robert F. Westcott for $150,000.00 with covenant of Insurance, etc., annexed June 29, 1895.

(O. M. C.)

1 Promissory note of John Lyons to Robert F. Westcott for $15000.00 dated June 29th, 1895, and endorsed "without recourse" by the payee.
1 Promissory note of same to same of same date similarly endorsed, for $450.00.
1 Promissory note of same to same of same date similarly endorsed, for $450.00.
Deed to secure the foregoing notes and other by John Lyons to Robert F. Westcott, dated June 29, 1895.
1 Certificate of Insurance, dated June 29th, 1895, executed by Dearing & Hull, agents.
Deed, J. W. Howie and J. F. Bragg, as executors, to R. F. Westcott, dated Nov. 27th, 1894.
Policy of Insurance to Robert F. Westcott of title to property conveyed in foregoing deed.
Bond & Mortgage, Thomas Martain to O. M. Carter, dated Nov. 8th, 1895.
Receipt, A. Minis to O. M. Carter dated, Nov. 11th, 1896.
Receipt, Thomas Martin to A. Minis, atty., dated Nov. 21st, 1895.

OBERLIN M. CARTER.

And on towit: the 14th day of April 1908 in the December term 1907 of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat Judge presiding, there was made by the Court, the following Decree and entry thereof:

FINAL DECREE APRIL 14, 1908.

The United States of America
vs.
Oberlin M. Carter *et al.*
} Bill No. 25980,

Pending in Northern District of Illinois, and auxiliary bills pending in Southern District of New York, District of New Jersey, Southern District of West Virginia, Southern District of Illinois, Southern District of Georgia.

Decree.

The above stated cause came on to be heard upon the pleadings and proofs on the matters reserved to be disposed of at the foot of the decree in said cause entered March 21, 1908,

Whereupon, it is considered, adjudged ordered and decreed by the court as follows:—

(1)

That the compensation of Max H. Whitney for all services rendered and to be rendered as receiver under the bills filed in the Northern and Southern Districts of Illinois, is fixed at the sum of $6,692.50, of which said sum said receiver has already been advanced from the funds which went into his hands the sum of $3,000.00. The said compensation to the receiver to be paid out of the proceeds of that part of the assets decreed to belong to the complainant.

That whereas said entire compensation fixed as above, contemplates the sale or collection of bonds and notes still in his hands aggregating some $64,000.00 in value, and the disbursement of all moneys which are or may come into his hands under the orders and decrees of this court, it is ordered that the sum of $1,692.50 out of the full amount fixed for his compensation shall be withheld from application to the receiver's compensation until the administration of said assets by the receiver as aforesaid is completed, and if the parties to the cause or either of them should appeal said cause without appealing from the compensation fixed for the said receiver, the said sum of $1,692.50 shall be withheld from application to the said receiver until he has completed his administration of the assets remaining in his hands as aforesaid.

(2)

It is further decreed that the bill of the International Audit Company for services rendered the defendant O. M. Carter by Robert Nelson as expert accountant and witness, for the sum of $1,000.00 which has been presented and filed by H. G. Stone, chief counsel for O. M. Carter, be and the same is hereby allowed and Max H. Whitney receiver is directed and ordered to pay the same to the said H. G. Stone as his attorney from the funds which have been or may be realized by the receiver from the proceeds of that part of the assets which have been decreed to belong to the complainant.

(3)

It is further decreed that the bill of Lyman E. Cooley for services rendered the defendant O. M. Carter as expert en-

gineer and witness, for the sum of $1,600.00 which has been presented and filed by H. G. Stone, chief counsel for O. M. Carter, be and the same is hereby allowed, and Max H. Whitney receiver is directed and ordered to pay the same to the said Lyman E. Cooley or to H. G. Stone as his attorney from the funds which have been or may be realized by the reeciver from the proceeds of that part of the assets which have been decreed to belong to the complainant.

(4)

The compensation claimed by Nathaniel C. Sears as fees for services as the attorney of Oberlin M. Carter at Chicago, as a charge upon the assets accounted for to the receivers under the agreement of November 6, 1901, is allowed to the amount of $5,000.00 which shall be in full for his compensation for all services rendered by him in said cause, and the same is directed and ordered to be paid to him by Max H. Whitney, receiver, from the funds which have been or may be realized by the receiver from the proceeds of that part of the assets which have been decreed to belong to the complainant.

(5)

The compensation claimed by Horace G. Stone as fees for services as chief counsel of Oberlin M. Carter, under the bill in this District and in the said auxiliary bills in the other districts is fixed and allowed for 2,000 days at $30.00 per day $60,000.00, from which is to be deducted the sum of $17,500.00 already advanced him from the fund in court under the interlocutory orders and decrees of the court, and the balance, $42,500.00, is directed and ordered to be paid to him by Max H. Whitney, receiver, from the funds which have been or may be realized by the receiver from the proceeds of that part of the assets which have been decreed to belong to the complainant, and the said allowance of $60,000.00 shall be in full compensation to said H. G. Stone for all services rendered by him in said cause including whatever services may be necessary to carry the decrees of this court into effect in the other districts in which auxiliary bills are pending nuder the terms of the agreement of November 6, 1901. And should the said assets left in the hands of said receiver after paying the other allowances directed by this decree to be paid by the receiver, be not sufficient to pay the entire al-

lowance for the fees of said H. G. Stone it is decreed that he shall be paid such deficiency out of the funds in the hands of the receivers in other districts.

(6)

Whereas said H. G. Stone as chief counsel for said O. M. Carter was under the interlocutory order and decree of this court paid the sum of $1,089.94 as an advance on bills for his expenses claimed to have been paid out by him, under the said agreement of November 6, 1901, the court then reserving for future determination items of expense claimed aggregating $308.69 objected to by complainant, and whereas H. G. Stone as such chief counsel has since presented bills for $1,289.39 and $271.23 for expenses claimed to have been paid out by him, under the said agreement of November 6, 1901, to the payment of which the complainant made objection, and whereas said H. G. Stone has presented an additional bill for the sum of $382.00 claimed by him to have been advanced by him to O. M. Carter: It is upon consideration ordered that said claims of said H. G. Stone for payment under said agreement of November 6, 1901 for said expenditures aggregating the sum of $2,251.31 be and the same are allowed and directed and ordered to be paid from the funds which have been or may be realized by the receiver from the proceeds of that part of the assets which have been decreed to belong to the complainant.

(7)

The motion of the United States to have a provision in the final decree in this cause, making certain allowances aggregating $35,885.23, as stated in said motion, which have heretofore been paid out of the fund in the hands of the receiver for and on account of the defendant O. M. Carter as an allowance for his personal expenses, and for printing bills, counsel fees, and accountant's fees, together with the additional amounts by this decree directed to be paid out of the fund in court for counsel fees, and allowances to expert witnesses for the defense, aggregating $52,351.31 a charge first upon the assets which by the decree of March 21, 1908 in this cause were decreed to belong to Oberlin M. Carter, is denied.

And the said Oberlin M. Carter is decreed to have and receive from the receivers under this bill, and the auxiliary bills, the said assets which by the said decree of March 21, 1908, were decreed to belong to him, free from all costs and

charges of the litigation, and free from any claim of the United States for the advances made or herein decreed to be made, for or on account of the said expenses of said Carter or allowances to his counsel as aforesaid.

(8)

The amounts heretofore paid under the interlocutory orders of the court, or which by this decree are directed to be paid by Max H. Whitney, receiver, to examiners and commissioners and stenographers, and to the Clerk and Marshal, are decreed to be a charge upon that part of the assets in the hands of the receiver decreed to belong to the United States.

(9)

The execution of this decree is stayed for fifteen days from the date hereof, and unless on or before the expiration of that time the said decree be superseded, the said Max H. Whitney, receiver of this court, shall at the expiration of that time deliver to said Oberlin M. Carter the assets in the hands of said receiver which in the said decree of March 21, 1908, were decreed to be the property of said O. M. Carter; and shall proceed to sell through some reputable stock broker at market value, such of the said bonds in his hands as have a market value, and may deliver the said C. W. Colehour note to the Attorney of the United States as the property of the United States. The proceeds of the said bonds so directed to be sold by the said receiver shall be applied to the payment of the allowances provided for in this decree, and if there be any excess of such proceeds in the hands of the receiver over and above the allowances directed to be paid by this decree, such excess shall be held by the receiver subject to the order and direction of the Attorney General of the United States as to its disposition.

(10)

It is further adjudged, ordered and decreed that the payments and allowances heretofore made or hereinbefore directed to be made for or on account of said O. M. Carter and his counsel from the assets brought into court under the bill in this district and under the other said auxiliary bills pending in other districts is and shall be taken as a full compli-

ance on the part of the complainant with all the requirements of said agreement of November 6, 1901, and a full satisfaction of all claims of said O. M. Carter or of any of his attorneys or counsel, whether in the proceedings in this district or in the proceedings under the said auxiliary bills in other districts under the said agreement of November 6, 1901. The question of whether the said agreement of November 6, 1901 embraces allowances if an appeal is taken by either side is not passed on herein.

And on towit, the 17th day of April 1908 came the defendant Oberlin M. Carter and filed in the clerk's office of said court a statement of election as to policy of Insurance in the words and figures following towit:

ELECTION OF O. M. CARTER AS TO INSURANCE POLICY.

In the Circuit Court of the United States, For the Northern District of Illinois, Eastern Division.

United States
vs.
Oberlin M. Carter *et al.* } Gen. No. 25,980.

Election.

In § 5 of the Decree in the above entitled cause, it is provided that if Oberlin M. Carter shall elect to make good to the Complainant the surrender value of life insurance policy #743543 on his life in the Equitable Life Assurance Society of New York, then the policy shall belong to Oberlin M. Carter.

In accordance with that provision, I hereby elect to make good the surrender value of said policy, fixed at $3,671.36 by the said Equitable Life Assurance Society by its statement dated April 3 1908, a copy of which is herewith, and to take the policy for myself; and I direct that the said sum of $3,671.36 be made good to the Complainant out of the income

on the assets in court which have been decreed to belong to me.

OBERLIN M. CARTER

Chicago, April 15, 1908.

(Copy)

Please refer to this letter in your reply and address the undersigned officially, always mentioning the number of your Policy and Post Office address.

The Equitable Life Assurance Society.
Paul Morton, President.

New York, Apr 3, 1908.

Mr. Oberlin M. Carter,
Dear Sir:

On return, with proper release of Policy No. 743543 on the life of yourself on June 7, 1908, or within six months thereafter (if premiums be paid to said date and the premium due on said date Not paid), we will pay in cash the sum of $3,-671.36, but unless otherwise expressly agreed, this offer will not be binding after the termination of the said six months. These values are inclusive of all dividends. The amount of this offer is based on the principles and methods employed by the Society, and the Society reserves the right to correct it, should any error in computation be discovered before the settlement is completed.

Yours respectfully,

J. G. VAN CISE,
Actuary.
W A S

Endorsement Election of O. M. Carter Filed Apr 17, 1908 H. S. Stoddard Clerk

And on to wit: the 28th day of April 1908 came the complainant by Marion Erwin, special assistant to the Attorney General, and Edwin W. Sims, Attorney of the United States for the Northern District of Illinois, and filed in the clerk's office of said Court in the said entitled cause an Assignment of Errors in the words and figures following to wit:

ASSIGNMENT OF ERRORS.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

The United States of America
vs.
Oberlin M. Carter *et al.*
} Bill No. 25980.

Pending in Northern District of Illinois and Auxiliary Bills pending in Southern District of New York, District of New Jersey, Southern District of West Virginia, Southern District of Illinois, Southern District of Georgia.

Now comes Marion Erwin, Special Assistant to the Attorney General, and Edwin W. Sims, Attorney of the United States for the Northern District of Illinois, who, for the said United States and by direction of the Attorney General thereof, is about to pray an appeal from the judgments and decrees entered by said Circuit Court in the above entitled cause, to the Circuit Court of Appeals of the United States for the Seventh Circuit, and for the said United States, Complainants in said cause, complain of errors in the record and proceedings in said Circuit Court in said cause, and show to the Court that the following errors intervened to the prejudice of Complainants, and assign the same as errors:

(1)

That the Court in and by its final decrees of March 21, 1908, and April 14, 1908, committed error in failing to find specifically on the issue between the United States and Oberlin M. Carter as to the fraudulent diversion by him of funds intrusted to him as disbursing officer, into the assets as charged in Complainant's bill in this cause and under the auxiliary bills pending in the several districts, as the court should have done under the pleadings and proofs and under the agreement of Nov. 6, 1901.

(2)

That the Court in and by its final decrees of March 21, 1908 and April 14, 1908, and in the findings made in its opinion filed March 17, 1908, upon which said decrees were based, committed error in holding that the following described cur-

rency deposits and the investments claimed by the Government in its bill to have been made with a part thereof, made during the period represented by what is called Division 1 in Complainant's Exhibit 319, were not shown to have been received by O. M. Carter from corresponding withdrawals of currency from the bank accounts of Benjamin D. Greene and John F. Gaynor, and derived from the proceeds of the river and harbor contracts as charged in Complainant's bill, to wit:—

Dec. 18, 1891	Withdrawal by B. D. Greene from American Exchange National Bank, N. Y.	$ 1,500.00
Dec. 18, 1891	Deposit to credit of O. M. Carter in Union Trust Co., New York, currency	1,400.00
June 8, 1892	Withdrawal by B. D. Greene from American Exchange National Bank, N. Y.	2,500.00
June 8, 1892	Deposit to credit of O. M. Carter in Union Trust Co., New York, currency	2,500.00
July 22, 1892	Withdrawal by John F. Gaynor from American Exchange National Bank, N. Y.	10,000.00
July 22, 1892	Deposit to credit of O. M. Carter in Union Trust Co., N. Y., currency	8,100.00
July 22, 1892	Deposit by O. M. Carter to credit of R. F. Westcott in Union Trust Co., New York, currency	2,000.00
Oct. 29, 1892	Withdrawal by John F. Gaynor from American Exchange National Bank, N. Y.	2,500.00
Oct. 29, 1892	Deposit by O. M. Carter to credit of M. W. Carter in Garfield National Bank, New York, currency	2,450.00

(3)

That the Court in and by its final decrees of March 21, 1908 and April 14, 1908, and in the findings made in its opinion filed March 17, 1908, upon which said decrees were based, committed error in holding that the following described currency deposits, and the investments claimed by the Government in its bill to have been made with a part thereof, made

during the period represented by what is called Division 4 in Complainant's Exhibit 319, were not shown to have been received by O. M. Carter from corresponding checks of John F. Gaynor drawn on his account in the American Exchange National Bank, New York, and paid from the proceeds of the diverted trust funds belonging to the complainant as charged in the bill, to wit:—

Withdrawal by John F. Gaynor from American Exchange National Bank, New York, by check of unknown date, paid March 7, 1893		$2,500.00
Deposit by O. M. Carter in Merchants National Bank, Savannah, Ga.		
March 4, 1893, currency	$650.00	
" 6, " "	565.00	
" 9, " "	327.14	
March 4, 1893, Exchange purchased by O. M. Carter at Savannah for currency	500.00	
		$2,042.14

(4)

That the Court in and by its final decrees of March 21, 1908 and April 14, 1908, and in the findings made in its opinion filed March 17, 1908, upon which said decrees were based, committed error in holding that the whole of the following described withdrawals of currency made from the illegal proceeds of the river and harbor contracts as charged in the bill, on deposit in the bank accounts of Benjamin D. Greene and John F. Gaynor, were not traced into corresponding deposits of currency in the accounts of O. M. Carter and R. F. Westcott, and that $11,500.00 thereof is not so traced, and that the investments claimed by the complainant to have been turned over to O. M. Carter by R. F. Westcott as representing said $11,500.00 were not traced to the illegal profits of said river and harbor contracts as charged in the bill, to wit:—

May 8, 1893	Withdrawal by J. F. Gaynor from American Exchange National Bank	$7,640	
" " "	Withdrawal by B. D. Greene from American Exchange National Bank	7,360	
			$15,000.00

	Amounts held by the Court to have been traced to above:		
May 13, 1893	Deposit to credit of R. F. Westcott, with Union Trust Co., N. Y., bills	$ 500	
" 15, "	With Van Deventer, N. Y., currency	3,000	3,500.00
	Balance held by the Court as not traced		$11,500.00

Whereas the Court should have held that the said balance, $11,500.00 is traced by the evidence into a deposit of $26,600.00 made by R. F. Westcott on May 23, 1893, to his own credit in the Union Trust Co., New York (the source of $15,000.00 of said currency deposit of May 23, 1893, being shown to have been from the cashing by R. F. Westcott of a certified check cashed May 13, 1893, and the source of $100.00 of said currency deposit of $26,600.00 only, being unaccounted for.)

(5)

That the Court in and by its final decrees of March 21, 1908, and April 14, 1908, committed error in finding in paragraph numbered (2) of said decree of March 21, 1908, that the following described securities in the hands of the receivers under said bill and auxiliary bills, were not purchased with the trust funds belonging to the complainant fraudulently diverted as charged in said bills, but were purchased with the private funds of Robert F. Westcott and Oberlin M. Carter, and are the property of said Oberlin M. Carter, to wit:—

5 Chesapeake & Ohio 5% bonds purchased Feb. 11, 1893, No. 21025 to 21029,	cost	$5,275.00
5 Chicago, St. P. & Omaha 6% bonds purchased April 11, 1893, No. 20242, 15926, 19282, 16101, 16672,	"	6,143.75
5 Chicago, St. P. M. & Omaha 6% bonds purchased Apr. 28, 1893, No. 2093, 21116 to 21118 and 21123,	"	6,102.25
5 Chesapeake & Ohio 4½% bonds purchased April 11, 1900, No. 24871 to 24875	"	4,993.75

(Said 5 C. & O. 4½% bonds being in lieu of 5 Wabash 1st Mort. 5% bonds No. 16135 to 16138 and 16140, originally purchased by R. F. Westcott Jan. 20, 1890, held not to be traced to

the trust fund and which went into the Orange, N. J., investment, and is represented by an equivalent amount of cash, paid over to J. H. Paul, for O. M. Carter in the partition of said Orange, N. J., property and invested by J. H. Paul in bonds.)

5 shares Savannah Cotton Mill stock purchased Nov. 3, 1892, par value 500 " 532.50

73.22 shares of the 100 shares of Savannah Towboat Company stock represented by certificates No. 133 dated Jan. 18, 1892, by part of Certificate No. 145 dated May 13, 1892, by Certificate No. 152 dated Aug. 31, 1892, by part of Certificate No. 170 dated Oct. 22, 1892, and by Certificate No. 217 dated Feb. 20, 1893, " 5,800.00

(6)

That the Court in and by its final decrees dated March 21, 1908 and April 14, 1908, in said cause, committed error in failing to sustain Complainant's exceptions numbered "First" and "Third" to the report of W. M. Booth, Special Master, said exceptions being to the allowance by the said Master of $6,750.00 salary to I. Stanton Carter claimed to be due him by O. M. Carter as a credit against the assets for which he was accountable to the receiver and to complainant in said cause, and which assets were held by the court to be a trust fund belonging to the United States, the agreement of Nov. 6, 1901, being that said I. Stanton Carter should disclaim any personal interest in the said assets, and the Complainant not being privy to any contract between I. S. Carter and O. M. Carter for salary, and the said I. S. Carter having received said assets into his hands with notice of the rights of Complainant therein.

(7)

That the Court by its final decrees dated March 21, 1908 and April 14, 1908 in said cause committed error in failing to sustain Complainant's exception numbered "Second" and "Third" to the report of W. M. Booth, Special Master, said exceptions being to the allowance by said Master as a credit against the assets for which said I. Stanton Carter was accountable to the receiver and to Complainant and which said assets were held by the Court to be a trust fund belonging to

the United States, of the sum of $1,819.27 for traveling expenses claimed by I. Stanton Carter as having been paid out by him in excess of the sum of $2,180.73 actually proved, the allowance being on the ground that "general experience proves that the actual expenses of traveling usually amount to about double what is estimated in advance," and no vouchers for said alleged expenditures being shown.

(8)

That the Court by its final decree dated March 21, 1908, by awarding a deficiency judgment in favor of the Complainant against I. Stanton Carter, for $11,454.18 only, failed to sustain complainant's exceptions numbered "Third" and "Fourth" which exceptions were to the Master's summary of the amounts for which I. Stanton Carter was accountable to the receiver and to complainant, for the trust funds in his hands, the said summary made by the Master giving credit to I. S. Carter for the amounts erroneously credited as claimed by Complainant in assignments of error herein numbered (6) and (7). The amount of the trust fund found by the Master in I. Stanton Carter's hands unaccounted for being $13,471.19 to Dec. 16, 1902 and he, under the interlocutory decree of the Court of Jan. 7, 1904 having subsequently delivered to the receiver two bonds costing $2,017.01, leaving the $11,454.18 for which the said deficiency judgment was rendered. Whereas eliminating the credit errors complained of as aforesaid the balance of the trust fund in the hands of I. Stanton Carter on Sept. 1, 1901 unaccounted for to the receiver to Dec. 16, 1902 was $19,890.46 as pointed out in said exceptions for which amount less said sum of $2,017.01 Complainant was entitled to a deficiency judgment against said I. Stanton Carter, and the Court committed error in not giving Complainant judgment against the said I. S. Carter for the sum of $17,873.45.

(9)

That the Court by its final decrees dated March 21, 1908 and April 14, 1908 in said cause committed error in failing to sustain Complainant's exceptions numbered "Fourth" to the report of W. M. Booth, Special Master, said exceptions being to the allowances by said Master as a credit against the assets for which said L. D. Carter was accountable to the receiver and to complainant, and which said assets were held

by the court to be a trust fund belonging to the United States, of the sum of $675.00 for amount claimed to have been paid by him out of the trust fund to J. H. Winkler in excess of the sum for $325.00 actually proved.

(10)

That the Court by its final decree dated March 21, 1908 and April 14, 1908, committed error in failing to sustain Complainant's exception numbered "Fifth," to the report of W. M. Booth, Special Master, said exception being to the allowance by said Master as a credit against the assets for which said L. D. Carter was accountable to the receiver and to Complainant, and which said assets were held by the Court to be a trust fund belonging to the United States, of the sum of $200.00 for amount claimed to have been paid by him out of the trust fund to J. H. Winkler, the evidence pointed out in the exceptions showing that said payment was included in amounts for which said L. D. Carter was already given credit by the Master, and no competent proof of any additional payments represented by said credit being made.

(11)

That the Court by its final decrees dated March 21, 1908 and April 14, 1908 committed error in failing to sustain Complainant's exception numbered "Sixth," to the report of W. M. Booth, Special Master, said exception being to the allowance by said Master as a credit against the assets for which said L. D. Carter was accountable to the receiver and Complainant, and which said assets were held by the Court to be a trust fund belonging to the United States of the sum of $1,554.43 for traveling expenses claimed by L. D. Carter as having been paid out by him in excess of the sum of $1,500.03 actually proved, the said allowance being on the ground that traveling expenses usually double any estimate in advance, and no vouchers for said alleged expenditures being shown.

(12)

That the Court by its final decrees dated March 21, 1908, and April 14, 1908, committed error in failing to sustain Complainant's exception numbered "Seventh" to the report of W. M. Booth, Special Master, said exception being to the allowance by the said Master of $12,916.66 to L. D. Carter, claimed to be due him by O. M. Carter, as a credit against the assets

for which he was accountable to the receiver and to Complainant in said cause, and which assets were held by the Court to be a trust fund belonging to the United States: The agreement of Nov. 6, 1901, being that said L. D. Carter should disclaim any personal interest in the said assets, and the complainant not being privy to any contract between L. D. Carter and O. M. Carter for salary, and the said L. D. Carter having received said assets into his hands with notice of the rights of complainant therein.

(13)

That the Court by its final decrees dated March 21, 1908, and April 14, 1908, failed to sustain complainant's exceptions numbered "Eighth" and "Eleventh" to the report of Special Master Booth, said finding of the Master excepted to being that L. D. Carter had in his hands unaccounted for to the receiver, of the trust fund, to Nov. 6, 1901, $17,211.11, from which he had paid out afterward for O. M. Carter in violation of the agreement after Nov. 6, 1901, $1,666.38, leaving a balance still in his hands of $15,544.73, and said exception being that the said summary made by the Master is erroneously arrived at by deducting from the amounts for which said L. D. Carter was accountable to the receiver and to Complainant the items of credit complained of in assignments of error herein numbered 9, 10, 11, 12. The amount of said assets unaccounted for in the hands of L. D. Carter for which he was accountable to the receiver and to Complainant being to Sept. 1, 1901 $32,871.66

From which is to be deducted subsequently turned over to the receiver		
Mar. 13, 1903 10 Kentucky Central bonds cost	$9,944.93	
Jan. 13, 1904 11 Kentucky Central bonds cost	10,939.42	20,884.35
		$11,987.31

And the Court committed error in said decree of March 21, 1908, in failing to sustain said exceptions, and in failing to give complainant a deficiency judgment against said L. D. Carter for said sum of $11,987.31 so in his hands unaccounted for to the receiver and to complainant as aforesaid.

(14)

That the Court by its final decrees of March 21, 1908, and April 14, 1908, failed to sustain Complainant's exception num-

bered "Ninth" to the report of Special Master W. M. Booth, the finding of the Master being that the balance of the trust fund received by I. S. Carter and L. D. Carter from all sources remaining in their hands Sept. 1, 1901, was $32,296.76 and $30,922.30 on Nov. 6, 1901, and that all of the same except $21.529.15 was reecived from J. H. Paul, James Bragg and R. E. Westcott. The exception being that said balance of the trust fund received by I. S. Carter and L. D. Carter from all sources in their hands Sept. 1, 1901, was $52,762.12 and that all of the same except said sum of $21,529.15 was received from said J. H. Paul, James Bragg and R. E. Westcott, leaving the sum of $31,232.97 in the hands of said I. S. Carter and L. D. Carter Sept. 1, 1901, not accounted for to the receiver up to the time of the Master's said finding, from which is to be deducted the cost of certain securities turned over to the receiver subsequent to said finding of the Master, to wit: turned over by L. D. Carter March 13, 1903, 10 Kentucky Central bonds, cost $9,944.93 and Jan. 13, 1904, 11 Kentucky Central bonds, cost $10,939.42, and turned over by I. S. Carter Jan. 8, 1904, 1 Kentucky Central bond, cost $997.56, and 1 Certificate for 1 Michigan Teelphone Co. bond, cost $1,019.45, leaving the sum of $8,331.61 of proceeds of said trust assets received from said J. H. Paul, James Bragg and R. E. Westcott, by I. S. Carter and L. D. Carter, which were still unaccounted for to the receiver and to the Complainant at the date of said decrees of March 21, 1908, and April 14, 1908.

(15)

That the Court by its final decrees of March 21, 1908, and April 14, 1908, committed error in failing to hold that the defendants, I. S. Carter, L. D. Carter and O. M. Carter, had not turned over to the receiver substantially all of the assets turned over to I. Stanton Carter and L. D. Carter by J. H. Paul, R. E. Westcott and James Bragg or their proceeds and reinvestments, except such as had been prior to the receivership, bona fide paid out or pledged by them for attorneys' fees or as expenses in defense of Carter, or expended by them legitimately in the handling of said properties, or which had not prior to the agreement of Nov. 6, 1901, been taken possession of by the receivers in said cause, and in not holding that the said defendants had not sufficiently complied with paragraph (9) of the agreement of Nov. 6, 1901, referred to in said decrees of March 21, 1908, and April 14, 1908, to entitle them to claim the benefit of paragraphs (7) and (8) of

said agreement; in this, that the said I. S. Carter and L. D. Carter did not file answers disclaiming any personal interest in the assets claimed by the Government, as provided in said agreement, but set up and claimed liens on said assets for salaries alleged to be due them by O. M. Carter to the amount of $22,500.00 and have contested for the same during the whole litigation, and have not accounted to the receiver or to the Complainant for assets for which they were so accountable under said agreement to the amount of $28,960.76, of which $8,331.61 were received from J. H. Paul, R. E. Westcott and James Bragg.

(16)

That the court in and by its final decrees of March 21, 1908, and April 14, 1908, committed error in denying to and in failing to give to Complainant, a deficiency judgment against Oberlin M. Carter for $105.019.66 being for so much of the proceeds of the trust fund belonging to the complainant, dissipated by Oberlin M. Carter and his agents prior to Nov. 6, 1901, as complainant elected to take a deficiency judgment for, to wit:

Paid out by O. M. Carter to Kellogg & Rose of New York, his attorneys in the Court Martial case.	
Oct. 12, 1897 Proceeds of 13 U. S. Coupon 1904 5% bonds No. 34449, 34450, 34452, 34454, 34455, 34477 to 34483, 55167, Exhibit 417 Parsons	$14,990.62
Nov. 23, 1907 Proceeds of 200 shares Delaware & Hudson stock, Certificates No. 25868 to 25869, Exhibit 344 Shields	21,875.00
Mch. 12, 1898 Proceeds of 10 Milwaukee & St. Paul 8% bonds No. 668, 1324, 2100, 2115, 2196, 2207, 2369, 3174, 3246, 3599, Exhibit 418 Parsons	10,000.00
Apr. 27, 1898 Proceeds of 2 Receivers Certificates No. 791 and 792 of Receivers of Baltimore & Ohio R. R. Co., Exhibit 417 Parsons	9,943.33
Also:	
Paid out by I. Stanton Carter, agent for O. M. Carter, from the trust fund for which I. S. Carter is given credit in Master's Report page 33 to sundry parties:	
March 21 and June 29, 1900 Paid to Kellogg & Rose, Attorneys of O. M. Carter	5,000.00

May 29, 1900	Paid to F. P. Blair	6,200.00
Sep. 24, 1900	" " "	5,000.00
Nov. 23, 1900	" " "	2,005.27
Apr. 25, 1901	" " Lucinda M. Carter	2,581.72
May 17, 1901	Proceeds of T. M. Cunningham notes appropriated by W. W. Mackall and Jere M. Wilson, Attorneys of O. M. Carter	10,275.00
Dec. 18, 1900	Payment by I. S. Carter printing	2,150.00
	Also:	
	Paid out by L. D. Carter, agent for O. M. Carter from the trust fund for which I. S. Carter is given credit in Master's report page 55, to sundry parties:	
Dec. 27, 1900 to Sep. 24, 1901	Paid to Atwood & Hooper, Attorneys for O. M. Carter	1,964.54
Aug. 13, 1900 to Nov. 30, 1900	Paid to C. H. Grosvenor, Attorney for O. M. Carter	1,500.00
Jan. 18, 1901 to Apr. 17, 1901	Paid to Jere M. Wilson, Attorney for O. M. Carter	$3,400.00
May 15, 1901	Paid to F. P. Blair, Attorney for O. M. Carter	6,000.00
	Also:	
Nov. 5, 1900 to June 29, 1901	rents collected by F. P. Blair, Attorney for O. M. Carter from Orange, N. J., property, Exhibit 18, Booth,	2,134.18
		$105,019.66

The complainant having elected to proceed against John H. Paul and R. E. Westcott, defendants to the auxiliary bill in New York for an accounting for the balance of the said trust assets in their hands which they did not turn over to I. Stanton Carter, D. P. Carter and L. D. Carter.

(17)

That the Court in and by its final decree of April 14, 1908, committed error in fixing the compensation of Nathaniel C. Sears as fees for services as Attorney of Oberlin M. Carter at Chicago at $5,000.00 and directing payment of the same from the proceeds of that part of the assets in the hands of the receiver decreed to belong to the complainant, because:

1st: Said defendants have not sufficiently complied with the terms of the said agreement of November 6, 1901, to entitle

them or their counsel to be paid out of the fund in the hands of the receiver, belonging to complainant.

2nd: That if said defendants have so sufficiently complied with the terms of said agreement, still whatever fee to which said counsel would be entitled out of the fund accounted for to the receiver would be a charge first upon that part of said assets which under the final decree of the court is or may be held to be the property of O. M. Carter and only secondarily upon those assets decreed to belong to the complainant.

3rd: That the amount of said allowance in any event is excessive and exorbitant considering the services rendered, and the fact that said allowance, together with the other allowances to be made under the said agreement were to be made from the fund which was to be accounted for to the receiver, and the maximum amount which under any circumstances can be considered as having been accounted for to the receivers under said agreement did not exceed $135,971.77.

(18)

That the court in and by its final decree of April 14, 1908, committed error in fixing the compensation of Horace G. Stone as fees for services as chief counsel of Oberlin M. Carter for 2,000 days at $30.00 per day, $60,000.00 and decreeing that the same should be paid out of that part of the assets which went into the hands of the receivers which were decreed to be the property of the complainant, because:

1st: Said defendants have not sufficiently complied with the terms of the said agreement of November 6, 1901, to entitle them or their counsel to be paid out of the fund which went into the hands of the receiver, belonging to complainant.

2nd: That if said defendants had so sufficiently complied with the terms of said agreement, still whatever fee to which said counsel would be entitled out of the fund accounted to the receiver, would be a charge first upon that part of said assets which under the final decree of the court is or may be held to be the property of said O. M. Carter, and only secondarily upon those assets decreed to belong to the complainant.

3rd: That the amount of said allowance, in any event, is excessive as to time and rate, and exorbitant considering the services actually rendered and the time reasonably required for such services, and the fact that said allowance together

with the other allowances to be made under the said agreement were to be made from the fund which was to be accounted for to the receiver, and the maximum amount which under any circumstances can be considered as having been accounted for to the receivers under said agreement did not exceed $135,971.77.

(19)

That the court in and by its final decree of April 14, 1908, committed error in decreeing that Horace G. Stone, chief counsel for O. M. Carter, be paid the sum of $2,251.31 for expenditures claimed to have been made by him under the agreement of Nov. 6, 1901, from the assets in the hands of the receivers decreed to belong to the complainant, because:

1st: Said defendants have not sufficiently complied with the terms of the said agreement of November 6, 1901, to entitle them or their counsel to be paid out of the fund which went into the hands of the receiver, belonging to complainant.

2nd: The sum of $308.69 included in the above amount so allowed, is made of items of alleged expenditures specified in complainant's objections filed to the allowance of same, which are not within the purview of said agreement of Nov. 6, 1901.

3rd. The sum of $1,289.39 included in the above amount so allowed, is not shown by any statement of the items thereof to be expenses of said H. G. Stone within the purview of the said agreement of Nov. 6, 1901.

4th: The sum of $271.23 included in the above amount so allowed is made up of items of alleged expenditures not within the purview of the said agreement of Nov. 6, 1901.

5th: The sum of $382.00 included in the above amount so allowed, is claimed by said Stone to be for amounts paid out by him to O. M. Carter, it not appearing for what it was so paid, or any reason shown why such payment falls within the terms of said agreement of Nov. 6, 1901.

6th: The petition of said H. G. Stone for the payment to him of said entire sum of $2,251.31 is not supported by any vouchers showing such disbursements nor any reason given why said vouchers were not filed with the petition, or otherwise offered in evidence.

(20)

That the court in and by its said decree of April 14, 1908, committed error in decreeing that the sum of $1,000 be paid from the funds which have been or may be realized by the

receiver from the proceeds of that part of the assets which have been decreed to belong to the complainant, to H. G. Stone as attorney for the International Audit Company and Robert Nelson for services rendered the defendant O. M. Carter by said Robert Nelson as expert accountant and witness, because:

1st: The court had already allowed and paid to Charles McPherson out of the fund in court, the accountant claimed to have been employed by said defendant under the terms of the agreement of November 6, 1901, the sum of $1,580.73 and there is no provision in said agreement for the payment of two accountants, to be paid out of the fund in court.

2nd: The bill of said International Audit Company and Robert Nelson is for a lump sum of $1,000 and without any specification of the particular days or of the number of days in which said services were rendered, or any other fact stated in the pleadings or in the bill rendered, which would make it ascertainable by the Court whether said charges for services is not in excess of $10 per day for his services when needed and actually employed plus his expenses, which was the limtiation provided in said agreement even as to the payment of the one accountant provided for therein.

3rd: The said services are not chargeable on the funds decreed to belong to the complainant, and there is no lien therefor on any of the fund in Court, the claim being one of private contract between said O. M. Carter and said expert witness.

(21)

That the Court in and by its said decree of April 14, 1908, committed error in decreeing that the sum of $1,600 be paid from the funds which have been or may be realized by the receiver from the proceeds of that part of the assets which have been decreed to belong to the complainant, to H. G. Stone as attorney for Lyman E. Cooley for services rendered the defendant, O. M. Carter, as expert engineer and witness for sixteen days at $100 per day, because:

1st—There is no provision in said agreement of November 6, 1901, for the payment from the fund in court, for any charges for services as an expert engineer rendered or to be rendered by any one to said defendant. The only kind of expert for whom compensation was provided in said agreement being an expert accountant.

2nd: The said services are not chargeable on the funds decreed to belong to the complainant, and there is no lien therefor on any of the fund in court, the claim being one only of

private contract between said O. M. Carter and said expert witness.

(22)

That the Court in and by its said decree of April 14, 1908, committed error in not decreeing that the sum of $35,885.23 which had been advanced under the interlocutory orders of the Court for and on account of the defendant, O. M. Carter, as allowances for his personal expenses, and for printing bills, counsel fees, and accountant's fee, together with sums, for similar allowances for the defense, aggregating $52,351.31 directed by said decree of April 14, 1908, to be paid out of the funds in the hands of the receivers, or so much thereof if any as is properly payable out of the funds of the receivers, is a charge first upon the assets in the hands of the receivers belonging to Oberlin M. Carter.

(23)

That the Court in and by its said decree of April 14, 1908, committed error in not decreeing that the amounts paid under the interlocutory orders of the court, and which were directed to be paid by Max H. Whitney, receiver, to examiners and commissioners and stenographers, and to the Clerk and Marshal, should be a charge first upon the assets if any which are in the hands of the receivers belonging to said O. M. Carter.

(24)

That the court by its said decree of April 14, 1908, committed error, in decreeing that said Oberlin M. Carter should have and receive from the receivers under the said bill, and auxiliary bills, the said assets which by the said decree of March 21, 1908, were decreed to belong to him, free from all costs and charges of the litigation, and free from any claim of the United States for the advances made or therein decreed to be made for or on account of the said expenses of said Carter or allowances to his counsel as aforesaid.

MARION ERWIN,
Special Asst. to the Atty. Gen'l.
ERWIN W. SIMS,
United States Attorney.

Endorsement: Assignment of Errors filed April 28, 1908. H. S. Stoddard, Clerk.

And on towit: the 28th day of April 1908 at the December Term 1907 of said court came the complainant by Marion Erwin Special Assistant to the Attorney General and Edwin W. Sims Attorney of the United States for the Northern District of Illinois, and in open court filed and caused to be entered a petition for an appeal in said cause, in the words and figures following towit:

APPEAL.

In the Circuit Court of the United States, For the Northern District of Illinois, Eastern Division.

The United States of America *vs.* Oberlin M. Carter *et al.* } In Equity Bill No. 25980,

Pending in Northern District of Illinois and Auxiliary Bills pending in Southern District of New York, District of New Jersey, Southern District of West Virginia, Southern District of Illinois Southern District of Georgia.

Come now, Marion Erwin, Special Assistant to the Attorney General, and Edwin W. Sims, Attorney of the United States for the Northern District of Illinois, and for said United States, and by direction of the Attorney General thereof, present to the court here their petition for an appeal to the United States Circuit Court of Appeals, for the Seventh Circuit and represent to the Court that in the proceedings and in the final decrees rendered on March 21, 1908 and April 14, 1908 herein, error hath intervened to the prejudice of these complainants as set forth in the assignment of errors filed herewith, which prayer for appeal is as follows:—

Said complainants considering themselves aggrieved by the final orders and decrees entered on the 21st day of March, 1908, and the 14th day of April, 1908, in said cause do hereby pray an appeal to the United States Circuit Court of Appeals, in and for the Seventh Circuit, and that said appeal be allowed, and the transcript of the record and proceedings

and papers upon which said orders and final decrees were made, duly authenticated, may be sent to the said Circuit Court of Appeals, and the proper citation be granted requiring said defendants Oberlin M. Carter, I. Stanton Carter, Lorenzo D. Carter and all other parties to said cause in interest, if any, to appear and show cause to said Circuit Court of Appeals, why said final orders and decrees, should not be reversed.

And petitioners pray that the court will grant an order superseding the said orders and decrees dated March 21, 1908 and April 14, 1908 pending said appeal.

MARION ERWIN
Special Asst to the Atty Gen'l
EDWIN W. SIMS
United States Attorney

Endorsement Petition for Appeal. Filed April 28, 1908 H. S. Stoddard Clerk.

And on towit: the 28th day of April 1908 in the December term 1907 of said Court, in the record of proceedings thereof; in said entitled cause before the Honorable Christian C. Kohlsaat Judge presiding, there was made by the Court the following order and entry thereof:

ORDER ALLOWING APPEAL.

The United States of America *vs.* Oberlin M. Carter *et al.* } In Equity Bill No. 25980,

Pending in Northern District of Illinois and Auxiliary Bills pending in Southern District of New York, District of New Jersey, Southern District of West Virginia, Southern District of Illinois, Southern District of Georgia.

On petition of the United States and on motion of Marion Erwin, Special Assistant to the Attorney General, and assignment of errors being filed, It is now, in open Court, at the same term of the court in which the orders and decrees of March 21, 1908 and April 14, 1908, appealed from, were entered, ordered by the Court that an appeal be and the same

is hereby allowed to the Circuit Court of Appeals of the United States for the Seventh Circuit, to have reviewed the said orders and decrees, and this order shall operate as a supersedeas to the said orders and decrees entered on March 21, 1908 and April 14, 1908.

And on towit: the 28 day of April 1908 in the December term 1907 of said Court, in the record of proceedings thereof, in said entitled Cause before the Honorable Christian C. Kohlsaat Judge presiding, there was made by the Court the following order and entry thereof:

ORDER EXTENDING TIME FOR FILING TRANSCRIPT OF RECORD.

United States of America,
vs.
Oberlin M. Carter *et al.*
} Bill No. 25,980, etc.

An appeal having been taken this day by complainant in the above stated cause from the decrees of this Court entered therein on the 21st day of March, 1908, and the 14th of April, 1908, to the Circuit Court of Appeals of the United States for the Seventh Circuit, and it appearing that the record in said cause is so voluminous as to make it impracticable for the clerk of this Court to prepare and transmit a transcript thereof to the said Circuit Court of Appeals by or before the return day of the citation issued therein, It Is Ordered that the time for filing in said Circuit Court of Appeals the transcript of the record be and the same is enlarged to the 15th day of August 1908.

In U. S. Circuit Court,

Northern District of Illinois

Eastern Division.

United States of America *vs* Oberlin M. Carter *et al*	In Equity 25980 Appeal to U S Circuit Court of Appeals 7th Circuit.

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the clerk of the said Circuit Court.

The following pleadings, orders, decrees &c the complainant requests shall be copied into the transcript on appeal in the above stated cause.

Bill of complaint. Filed Aug 27, 1901

42 Exhibits to bill (blue prints furnished).

Order appointing Receiver and rule to show cause Filed Aug 27, 1901

Marshal's return on certified copy of above order Filed Sep 10, 1901

Order for service by Publication &c Aug 27, 1901

Marshal's return on certified copy of above Sep 23, 1901

Docket entry as to filing Receivers bond Aug 27, 1901

Chancery subpoena issued Aug 28, 1901

Marshal's return to subpoena. Filed Aug 29, 1901

Appearance of L D & I. S. Carter Sep 12, 1901

Report of Max H Whitney Receiver of demands & Exhibits thereto. Filed Sep 23, 1901

Motion for rule for contempt

Order to deliver assets or show cause for contempt Sep 23, 1901

Appearance of O. M. Carter Oct 9, 1901

Demurrer of O. M. Carter to bill. Filed Oct 21, 1901

Demurrer of L D Carter to bill Filed Oct 21, 1901

Demurrer of I. S. Carter to bill Filed Oct 21, 1901

Answer of O. M. Carter to rule to show cause for appointment of Receiver Filed Oct 21, 1901

Answer of L. D. Carter to rule to show cause for appointment of receiver Filed Oct 21, 1901

Answer of I. S. Carter to rule to show cause for appointment of receiver Filed Oct 21, 1901

Answer of L. D. Carter to rule to show cause on contempt Filed Oct 21, 1901

Answer of I. S. Carter to rule to show cause on contempt Filed Oct 21, 1901

Stipulation and order continuing receiver Oct 28, 1901

Docket entry—Motion of complainant for reference to master postponed. Oct 28, 1901

Stipulation of Nov 6, 1901 and order approving, Nov 6, 1901

Order that N. W. Harris & Co turn over assets etc Nov. 11, 1901

Order dismissing Demurrers Jany 22, 1902

Answer of O. M. Carter to bill. Filed Feb. 1, 1902

Answer of L. D. Carter to bill Filed Feb 1, 1902

Answer of I. S. Carter to bill Filed Feb 1, 1902

Replication to answer to bill Filed Mch 3, 1902

Petition of U. S. for extension of time Filed Apr 29, 1902

Stipulation for extending time Filed Apr 29, 1902

Order extending time April 29, 1902

Order extending time and for method of taking testimony in other districts Sep 15, 1902

Order of reference to Wm M. Booth Sp. Master .Oct 15, 1902

Order taking off time limit as to taking testimony Jan 3, 1903

Interlocutory decree Jany 7, 1904

Order appointing R. H. Wyman Examiner Jan 7, 1904

Order appointing G. W. Burgoyne Examiner Nov 28, 1905

Petition for leave of absence by Compls Solr etc Filed Dec 8, 1905

Order granting leave of absence &c Dec 8, 1905

Order appointing R H Wyman Examiner to sit in other districts Dec 11, 1905

Notice to complts Solr of intention to move sitting cause for trial Filed May 8, 1906

Order setting cause for June 12, 1906 May 8, 1906

Order postponing hearing to Aug 29, 1906 July 24, 1906

Order postponing hearing to Sep 18, 1906 Aug 28, 1906

Entry as to hearing Sep. 18, 1906

Entry as to hearing Sep 19, 1906

Entry as to hearing Sep 20, 1906

Entry as to hearing Sep 21, 1906
Entry as to hearing Sep 26, 1906
Entry as to hearing Sep 27, 1906
Entry as to hearing Sep 28, 1906
Entry as to hearing Oct 1, 1906
Entry as to hearing Oct 2, 1906
Entry of hearing on settlement of decree Feb 10, 1908
Entry of hearing on settlement of decree Feb 21, 1908
Entry of hearing on settlement of decree Feb 24, 1908
Entry of hearing on settlement of decree April 13, 1908

Administrative Orders

Order to pay Whitney Receiver $1000. Nov 22, 1902
Order to pay Leonard Stenographer $235.45 Dec 18, 1902
Order to pay Booth master $750. April 27, 1903
Order for Receiver to pay Insurance Premium June 8, 1903
Order to pay Whitney Receiver $1000 Feb 6, 1904
Petition of H. G. Stone for fees Filed Feb 10, 1904
Petition of F. P. Blair for fees Filed Feb 10, 1904
Answer of U. S. to Petition of Blair for fees Filed Feb 13, 1904
Order allowing H. G. Stone $6000 Feb 15, 1904
Order to pay Wyman Examiner $406. Apr 28, 1904

Wymans bill attached

Account of H. G. Stone for expenditures Filed May 2, 1904
Order to pay H. G. Stone $1089.94 May 2, 1904
Order for Receiver to sell Telephone Co bond June 20, 1904
Order to refund H. G. Stone Premium on Ins. policy Aug 9, 1904
Petition and account of O M Carter for personal expenses Filed Oct 12, 1904
Answer of U. S. to above petition of O M Carter. Filed Oct. 12, 1904
Order to pay O. M. Carter $1000 etc Oct 12, 1904
Order to pay Whitney Receiver $500 Feb 13, 1905
Order for Receiver to sell certain bonds Feb 13, 1905
Order to pay H. G. Stone $5000 etc Feb 13, 1905
Order to Wyman Examiner $770. Apr 20, 1905

Account attached.

Order to pay Hewlett Examiner 37.80 May 2, 1905

Account attached

Order to pay H. G. Stone $42 50 etc Sep 25, 1905
Order to pay R. H. Wyman Examiner $300 Oct 6, 1905
Order to pay R. H. Wyman Examiner $300 Oct 23, 1905
Order to pay R. H. Wyman Examiner $600 Nov 6, 1905
Order to pay Whitney Receiver $500 Nov 8, 1905
Order to pay Wyman Examiner $500 Nov 27, 1905
Petition of H. G. Stone for fees Filed Dec 11, 1905
Answer of U S to above petition Filed Dec 11, 1905
Order to pay H. G. Stone $2500 Dec 11, 1905
Order to pay Wyman Examiner $500 Dec 12, 1905
Order for Receiver to sell certain securities Dec 13, 1905
Order to pay Wyman Examiner $1000 Jan 3, 1906
Order to pay clerks costs $78.40 Feb 5, 1906
Order to pay Wyman Examiner $700 June 18, 1906
Order to pay Gunthorp-Warren Co $1540. June 19, 1906.
Order to pay Wyman Examiner $1319.55 Nov 6, 1906

Attached account.

Notice of H. G. Stone of application for fees Jan 12, 1907
Answer of U. S. to above Filed Jan 14, 1907
Order to pay H. G. Stone $2500 Jan 14 1907
Answer of U. S. to notice of application of H. G. Stone for fees Filed Aug 7, 1907
Notice of application Filed Aug 7, 1907
Order to pay H. G. Stone $1500 Aug 7, 1907
Order to pay Wyman Reporter $226.85 Apr 1, 1908

Account Attached.

Order to pay Gunthrop-Warren Co. $1486.90 Apr 6, 1908

Account attached.

Order to pay McPherson Expert &c $1580.73 Apr 6, 1908
Order to pay Wyman Reporter $56. Apr 15, 1908

Account attached.

Petition of H. G. Stone for fees Filed April 1, 1908
Affidavit of H. G. Stone Filed Apr 9, 1908
Affidavit of W W Gurley Filed Apr 9, 1908
Affidavit of J J. Herrick Filed Apr 9, 1908
Affidavit of N. C. Sears Filed Apr 9, 1908
Affidavit of J. S. Miller Filed Apr 9, 1908
Affidavit of J. P. Wilson Filed Apr 9, 1908
Answer of U. S. to petition of Stone Filed April 8, 1908
Expense bills of H. G. Stone Filed Apr 11, 1908
Objections of U. S. to expense bills of Stone Filed Apr 8, 1908
Petition of N. C. Sears for fees Filed Apr 1, 1908
Affidavit of J. S. Miller attached.
Affidavit of J. J. Herrick attached.
Affidavit of N. C. Sears Filed Apr 13, 1908
Answer of U S to Petition of Sears Filed Apr 8, 1908
Claim of Lyman E Cooley Filed Apr 11, 1908
Objections of U. S. to claim of Cooley Filed Apr 8, 1908
Claim of International Audit Co. Filed Apr 11, 1908
Objection of U. S. to claim of International Audit Co Filed Apr 8, 1908
Motion to fix compensation of Receiver Filed Apr 8, 1908
Agreement as to fixing compensation—attached.
Report of Receiver Filed Apr 14, 1903
Report of Receiver Filed Jan 29, 1904
Report of Receiver Filed Feb 16, 1905
Report of Receiver Filed Aug 17, 1906
Report of Receiver Filed Feb 4, 1908
Motion of U. S. as to adjustment of advances to O. M. Carter & his counsel Filed Apr 13, 1908
Complainants Exceptions to report of Booth Master, Filed Apr 24, 1903
Exceptions of L D & I. S. Carter to report of Booth Master. Filed Apr 25, 1903.
Motion of U. S. to have opinions of Court filed nunc pro tunc Filed Apr 14, 1908
Order to file opinions nunc pro tunc Apr 14, 1908
Opinion handed down Jan 9, 1908.
Opinion handed down Apr 14, 1908
Decree of Mch 21, 1908 and Exhibits
Decree of Apr 14, 1908

Election of O. M. Carter as to Insurance Filed Apr 17, 1908
Assignment of Errors. Filed April 28, 1908
Appeal Filed April 28, 1908
Order allowing appeal Apr 28, 1908
Order extending time for filing Transcript Apr 28, 1908
A separate Praecipe will be issued to cover the evidence Master's report etc to be sent up in the transcript.

Respectfully

MARION ERWIN
Sp. Asst to the Atty Gen'l
Complts Solicitor.

May 10 1908

(Endorsed) Praecipe for Transcript on appeal covering the pleadings, orders & decrees. Filed Apl 28, 1908 H S Stoddard, Clerk.

And on towit: the 1st day of May 1908 in the December Term 1907 of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Christian C. Kohlsaat Judge presiding, there was made by the Court, the following order and entry thereof:

ORDER AS TO SENDING UP ORIGINAL DOCUMENTS ON APPEAL.

United States of America
vs
Oberlin M. Carter, *et al.* } No. 25980

Appealed to United States Circuit Court of Appeals, Seventh Circuit.

Whereas, some of the original documentary evidence in the above stated cause were by agreement of parties held by Mr. Edward I. Johnson as custodian, subject to the inspection of this Court pending the trial, and some original documentary evidence was held by the clerk of this Court subject to inspection of this Court pending the trial.

It is Ordered by the Court that either party may give notice to the other side and to said custodians to transmit to the Appellate Court any of said original documents which they may desire to be inspected by the Appellate Court on the appeal, and said custodian shall transmit said original documents to the Appellate Court for its inspection accordingly.

Consented to
HORACE G. STONE
Atty for defts Carter et al
MARION ERWIN
Special Asst to the Atty Genl
April 30, 1908

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

United States of America
vs.
Oberlin M. Carter *et al.*

In Equity
No. 25980

Appealed April 28, 1908 to U. S. Circuit Court of Appeals for Seventh Judicial Circuit.

Identified as Volume 1 of Transcript of record on appeal.

Dated, Chicago, Illinois, this 11th day of September, A. D. 1908.

H. S. STODDARD,
Clerk.

(Seal)

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

United States of America
vs.
Oberlin M. Carter *et al.*

} Appeal No. 1534 and Cross-Appeal No. 1535 at Oct. Term 1908.

Appealed May 26, 1909, to the Supreme Court of the United States. Identified as Volume 1 of Transcript of Record on Appeal.

Dated, Chicago, Illinois, this 12th day of June, A. D. 1909.

EDWARD M. HOLLOWAY,
Clerk U. S. C. C. of Appeals.

(Seal)

VOL. 2

TRANSCRIPT OF RECORD.

(Volume 2 of Record includes testimony in Vols. 1, 2, 3 and appendices or original Board of Officers record.)

Pages 435 to 1053.

IN THE

Supreme Court of the United States

No.

THE UNITED STATES OF AMERICA,

Appellants,

vs.

OBERLIN M. CARTER, LORENZO D. CARTER, I. STANTON CARTER, HORACE G. STONE, NATHANIEL C. SEARS, THE INTERNATIONAL AUDIT COMPANY, ROBERT NELSON, AND LYMAN E. COOLEY,

Appellees.

Appeal from the Circuit Court of Appeals of the United States for the Seventh Circuit.

CERTIFICATE OF EVIDENCE.

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

United States of America
vs.
Oberlin M. Carter *et al.*
} In Equity Gen. 25980

The following evidence was before the said Circuit Court on the trial of the merits of the above entitled cause. The terms and limitations affecting the use or admissibility of certain parts thereof, being set forth in the stipulations of counsel appearing in the record.

TESTIMONY BEFORE BOARD OF OFFICERS.

VOLUME I.

M. I.

STENOGRAPHIC REPORT
of
AN EXAMINATION
by a
BOARD OF OFFICERS
OF THE CORPS OF ENGINEERS AT
Savannah, Ga., September 22, 23 and 24, 1897.

J. S. Harrison, Stenographer,
Savannah, Ga.

(Stamped)
Office of Chief of Engineers
War Department
22530

78
Nov. 13, 1897

(Stamped)
Office of the The Secretary
War Department
2653
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Oct. 11, 1900

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State of Georgia, }
Chatham County. }

Personally appeared J. S. Harrison, who being duly sworn deposes and says that he is the Official Stenographer of The City Court of Savannah, that the stenographic notes taken by him at the hearing before the Board of Officers of The Engineer Corps, at Savannah, Ga., on September 22, 23, 24 and 25, 1897, are a faithful record of the proceedings, and that the typewritten copy submitted is a true transcript of said stenographic notes.

JOHN S. HARRISON.

Sworn to and subscribed before me, this September 7, 1897.

J. W. O. STERLY,

(Seal) *Notary Public Chatham Co., Georgia.*

1 Stenographic Report of an Examination by a Board of Officers of the Corps of Engineers, convened at Savannah Georgia, September 22, 1897, by virtue of G. O., No. 32, Headquarters Corps of Engineers, of September 17, 1897.

The Board convened for the taking of testimony and the hearing of evidence at 10 a. m., on September 22, 1897, at the office of the United States Engineer; present, Col. George L. Gillespie, Chairman: Major Charles W. Raymond, Major Henry M. Adams, who constitute the Board of Officers; Capt. O. M. Carter, Capt. Cassius E. Gillette, and the stenographer.

Col. Gillespie: The Board desires that you make a presentation of your case, in further explanation of the charges contained in your letter of September 17, 1897, to the Chief of Engineers.

Capt. Gillette:—I have here copies of the specifications for different contracts, beginning with the one opened on
2 September 10, 1892. In each of these the specifications for brush mattresses are essentially the same, showing three designs, to be used at the option of the Engineer Officer in charge. In the specifications appear these words, "The United States reserves the right to make such alterations in the details of the construction, or in material, as may be deemed best during the progress of the work, providing that should such alterations materially vary the cost of the mattress the price to be paid shall be increased or diminished proportionately, such change of price being agreed upon before the alterations in the mattress are made." It also says, "Separate bids for the designs of the mattress are not desired. One price only should be given in the proposals, and the price so stated will be understood as referring to any of the designs which may be required by the Engineer Officer in Charge." That appears, with some slight variations in all the specifications. Bids were received on these specifications and contracts were awarded. None of those designs have been used. A form of mattress that is somewhat analogous to the third design has been used, enormously

cheaper than the third design would have been, and no record appears that any reduction in the price was made as permitted by the specifications. To show this, I inspected
3 the first mattress that was built, or the first mattress that came to my notice, at Cumberland Sound, and I have a photograph of it here. I also have drawing showing the three designs as proposed, and drawings of the mattress as built. Taking what is known as the eight course mattress, which is the kind shown in the photograph; this mattress, as I inspected it was built of loose bundles of brush, tied with, I think, spun yarn, at spaces of about three or four feet, and loosely made into a thick mattress, divided into layers by a grillage of small pine poles, approximately like the third design of the specifications. I have been informed, and the records of the office verify it, that the system of payment under Capt. Carter was to pay for that mattress by the square yard, and to pay for each layer, of course, as if it was a separate mattress. In trying to go across the mattress the mattress I stepped onto it, and sunk into it nearly to my waist. It was exceedingly loose; nothing that came anything like being the fascines that were described in the specifications. That is, "All fascines shall be made of live brush of cedar, water oak, myrtle, sweet gum, or any other variety of wood approved by the Engineer Officer in charge.

The fascines will be from thirty to one hundred feet in
4 length, and must be compressed tightly, by an approved form of choker, to a diameter of nine inches at intervals of two feet, where they must be bound firmly with wire or tarred rope of an approved strength. The brush used will be as straight and well trimmed as can be obtained; the fascines shall be carefully and thoroughly made and handled with care. They shall be piled up on shore, or on barges for measurement in such way as the Engineer Officer may direct." (That part of the specifications apply to only one contract. This remark within parenthesis is by Capt. Carter).

The bundles of brush, which might be taken to represent fascines, in the mattress I inspected were short bundles, fifteen to twenty feet in length and sometimes shorter, and frequently the brush was not trimmed at all. I have since had tests made of the bundles of brush which the contractor had on hand, and I will submit them. This is in the form of a letter from an inspector in the brush camp, Mr. Hale, in which he says that he measured the bundles of brush that the contractor had on hand and then tightened them and

choked them properly; before choking they mesured 3.5 feet in circumference and after choking 2.1 ft. Mr. Hales is the inspector that I placed in the mattress camps. When I came here there was no inspector of the making of brush fascines in the camps, and the testimony will show, I expect, that except at long intervals and for a short time there never have been any under these contracts. This statement comes from the inspector of mattress camp for Savannah Harbor, and I also have a statement, more complete from the inspector for the mattress camp for Cumberland Sound. They both show about one-quarter the cross section after compression that the bundles had before compressing. I then had the above mentioned mattress sunk in the work and as it sank out of sight a great quantity of leaves floated off, a great number of leaves floated away. The next mattress was in better shape—the contractor didnt know that I was going to inspect the first one, but he did know that I was going to inspect the second. Measurements showed that the mattresses contained about four-ninths of the material, of the quantity of the material required by the specifications. To do the work shown by the specification it would require eight of those mattresses, and eight trips to sea, whereas by building eight courses at once it required only one trip to sea, and enormous saving was made by that, which accrued only to the contractor as the United States got no benefit from it.

Major Raymond: I didnt quite understand that. You say those mattresses took only one trip to sea?

Capt. Gillette: Yes sir, one trip, towing out to sea.

Major Raymond: And if built according to the specifications?

Capt. Gillette: It would take eight trips. He might have taken two at once, but it would have been very awkward and difficult. The camp for Savannah River is about 60 miles from the breakwater. Under the specifications the mattress should be sunk in layers, with rock on each layer, each layer sunk separately, while in this work they are all sunk at once and rock put on top of the whole. This has also resulted in an enormous saving, none of which has accrued to the United States.

I will also submit a report of the assistant engineer on the measurement of two mattresses. The assistant engineer told me, he is now sick in the hospital, but I have his afidavit, which I will submit—that the mattresses, the first mattress

was as good in quality, as the average previously sunk but slightly deficient in height. I have also a report from the same man, Marion Twiggs showing the average height, width and number of cubic yards of stone placed on the mattresses under the present contract on Cumberland Sound. I also submit a report from Marion Twiggs, Assistant Engineer,
7 showing the method of construction of the brush mats in Cumberland Sound, which shows a kind of choker that was used. Here is a table showing the average height of mattress placed under that contract, by Marion Twiggs.

A. S. Cooper, in March last reported by letter to Capt. Carter that the mattress work was not standing up and that it needed more rock badly. No answer of any kind to that letter can be found on record, and Mr. Cooper states that he got no letter. In the month of June he reported the matter again, and an answer was returned by Capt. Carter ordering more rock on the mattresses. This was not carried out, and was the same day verbally countermanded by Capt. Carter. On the 6th of August, 1897, I wrote a letter to an inspector, Mr. Daniels, the correspondence is before you. A. S. Cooper also received a letter from Mr. Daniels, which I will also submit. This was upon receipt of his report of the amount of work done by The Atlantic Contracting Company.

Col. Gillespie: Was this a report you got from Daniels, or from Cooper?

Capt. Gillette: From Daniels. The letter from Daniels came through Cooper, and Cooper answered it.

Col. Gillespie: It passed through Cooper's hand?

Capt. Gillette: Yes sir. (Here Capt. Gillette reads letter from Daniels.)

8 Capt. Gillette: In addition to the mattresses not being up to specifications, the stone used was not up to specifications. It is prescribed in the specifications that the stone shall be of a specific gravity of 2.4, which means 149 pounds to the cubic foot. The bulk of the stone used has been Florida limestone, and it runs from—I think 93 pounds was the lowest, up to 140, averaging between 115 and 125 pounds per cubic foot, and instead of weighing say 88 pounds under salt water it weighs 41. I am aware that that which has been received before may have been higher than that, but that is the average of what I took.

At Cumberland Sound I had some soundings taken concerning the first nine mattresses sunk under the present contract, and I submit the result. I attach a letter from Marion

Twiggs, Assistant Engineer, of August 15, 1897. I also attach a computation of the volume of those nine mattresses at present, with an estimate of the cost per cubic yard of that portion of the jetty, and the result is $13.69 per cubic yard.

I also submit a table from the official records showing the work, the date of opening the bids, the dates of opening the bids, the names of the bidders and the prices bid for mattresses and stone. Also a table showing the comparative amounts used in canvassing bids and the amounts actually used. This shows that wherever the name of the contractor is Gaynor, Bangs, The Atlantic Contracting Company, Walsh, or Ely the quantity of brush used has been greatly increased, and the quantity of stone used has been very much decreased. Where the name of the contractor is Twiggs, it is the other way.

Major Raymond: In how many cases does that occur in the case of Twiggs?

Capt. Gillette: It occurs once.

Major Raymond: What is the full name of that contractor?

Capt. Gillette: Albert J. Twiggs.

I also present a table showing the dates of the contracts. the square yards of mattress used, the amount paid, the amount retained, and the amount still due. Under the Savannah Harbor Contract of 1892, 350,000 square yards of mattress work were used to canvass bids, also 300,000 yards of fascines. There has been, up to July 30, 1897, 1,363,572 square yards of mattresses and 208,124 cubic yards of fascines used on the work. 50,000 yards of first class stone was used to canvass bids; none was used in the work. Fourth class stone, 200,000 tons were used to canvass bids, 127,764 were aparently used. On the present contract on Savannah Harbor 200,000 yards of mattresses were used to canvass bids, and 255,000 and over had been already used to July 30, 1897. Under the contract for Cumberland Sound for 1896, the estimate used in the project was 425,000 square yards of mattress, 125,000 cubic yards of first-class rock, 300,000 feet of second class rock and 100,000 feet of third class rock, aggregating 425,000 cubic yards of rock. For canvassing bids 200,000 square yards of mattress were used and 475,000 cubic yards of rock, increasing the estimate for rock, and cutting the estimate for brush in two, using less than one half the amount. Up to July 30 of this year 446,000 square yards of mattress had been used, more than twice as much

as was used in canvassing bids and more than the original estimate.

This is an outline of the facts I wish to present showing deviation from the specifications. I also submit three photographs, two of the first mattress that I inspected at Cumberland Sound and one of the single course mattress constructed according to the specifications, with the exception that they are not scarfed with a long lap. In addition to these
11 facts, and in connection with the amount of work done, there appear on the records of the office official statement on the part of Captain Carter, which do not seem to be borne out by the facts. On a letter from the Chief of Engineers to Captain Carter, is an endorsement dated December 31, 1896, signed by Capt. Carter; I have not the original here, it is in Washington, as follows; "Respectfully returned to the Chief of Engineers, inviting attention to the additional inclosure. The additional inclosure refers to a statement of the amount of brush mattress to be used in Savannah Harbor. That inclosure says, "In the specifications only 200,000 square yards of mattress are given, but as the new soundings show that 300,000 square yards will be required, that estimate has been changed, as provided in paragraph 44 of the specifications." The records of the office do not show that any soundings were made. The office force, who would certainly know it, if it had been made say that none was made. A survey was made on the third of February, 1897; this is dated December 31, 1896. That document is also submitted.

Col. Gillespie: A survey was made?

Capt. Gillette: About five weeks after the date of this letter. I submit also a copy of that survey, and a copy
12 of the survey upon which the project was based.

I also submit a portion of the correspondence with the steamboat inspector here concerning the inside route to Beaufort. The correspondence is very voluminous and is at the service of the Board. I will also submit a report of Capt. Carter on the survey for that route. The old original route went around the point of Jones Island, leaving the Savannah river near what is known as dam 33. The works in the Savannah river nearly cuts off that route, but there is an opening left for boats. In Executive Document 295, 53d Cong. 3d session Captain Carter discusses the improvement of the inside route from Savannah to Beaufort. He discusses two routes, neither of which is the old original route. One is the shorter, which he estimates will cost about $85,000; one is

longer and involves considerable dredging and extension of dam 31 to Turtle Island by brush mattress, and he estimates the cost of that at about $107,000. The old route is not mentioned. In the letters to which I refer complaint is made of the closing up and dumping of mud into this old route. In his correspondence with the Chief of Engineers occurs a statement, or two statements from Capt. Carter, which must have deceived the Chief of Engineers and were apparent-
13 ly intended to do so. In one of his letters he says, "Nothing has been deposited in the steamboat channel back of North Long Island training wall;" and that in connection with the general trend of the correspondence, indicates that letter was intended to deceive his superior officer. The other statement to which I refer is as follows: "The distance between Savannah and Beaufort is practically the same by both routes, but the route across the sound in rough weather is impassible for small boats. The present route has been shoaling for some years, but the shoaling has been hastened by the construction of works of improvements just mentioned; those works are North Long Island training wall and dams 33 and 35." By omitting to state that the route was shoaling because of the fact that enormous quantities of dredged material was being dumped in the vicinity of the channel, and the very day that this was written at least two dredges were dumped where the tide would carry them into the channel —those two statements appear to be intended to deceive his superior officer. A third attempt, all the details of which I have not here, but which the public documents show, was in connection with the contract of 1892. That contract provided for the removal of a portion of Hutchinson's Island, opposite the city. This was not done. It was contracted for, but was not carried out. In a communication to the Chief of En-
14 gineers Capt. Carter gives a reason why that was not carried out, because people had been buying up lots, for the purpose of charging exorbitant rentals while the work was being done, and by postponing it $50,000.00 would ve saved to the United States. I have had a careful examination made of those lots and submit maps showing them. With one possible exception, no lots have changed hands for several years. Mr. Willink purchased a lot about 1890, which adjoined his marine railway, and he had to have it as it was being sold and his railway covered a portion of it.

It seems to me that that is a fair statement of my case. There are other matters which I desire to present to the Board, but I have not investigated them sufficiently to take

the responsibility of bringing them in anything like the form of charges at the present time. When I have them prepared, if the Board is still in session, I will bring them up. The facts concerning them are at the service of the Board, but I do not desire to bring them as charges against Captain Carter.

I will read an affidavit from Mr. Marion Twiggs, Assistant Engineer in connection with the mattress that I inspected. Mr. Twiggs is very sick in the Savannah Hospital and unable to be here.

15 A. S. COOPER, testified as follows:—

Direct Examination by Capt. Gillette.

Q Will you give me your name and your history, connected with Capt. Carter and the works recently under his charge?

A My name is A. S. Cooper, and I first came to Savannah in 1884.

Q Was that your first connection with Capt. Carter?

A I did my first work for Capt. Carter in the Department of Missouri and Leavenworth, Kn. I went there in 1882, to serve as topographical assistant in that department. I was in that department for about a year and nine months. I came to Savannah in 1884.

Q (By Major Raymond) How did you happen to come to Savannah?

A Capt. Carter requested me to come here, and I got my discharge from the department of Missouri and came here.

Q How long did you stay here at that time?

A Some time in 1888, I think.

Q In what capacity?

16 A First as inspector and then as assistant engineer.

Q When did you come back after leaving in 1886?

A I came back the same year, the fall of the same year.

Q How long did you remain at that time?

A I remained until 1888.

Q When did you come back after leaving them?

A I left in 1888 and came back in the fall of the same year.

Q How long did you remain at that time?

A I remained until 1890, July 1890.

Q In what capacity?
A As assistant engineer.
Q How long did you remain away in this instance?
A I remained away about three years, and came back in 1893.
Q Under what circumstances did you come back these various times, at your own solicitation or that of Capt. Carter?
A At that of Capt. Carter.
Q In what capacity did you come back in 1893?
A As assistant engineer in charge of the Savannah harbor, local charge.
17 Q And you have been here ever since?
A Yes sir.
Q Were you ever at Cumberland sound?
A I was at Cumberland sound in 1886 and 1887.
Q Now, referring to contracts for the Savannah harbor, from all you know for the eight years previous to 1896, were the specifications concerning brush properly carried out?
A Not fully, no sir.
Q Were the mattresses built according to any of the designs of the specifications?
A They were built according to the third design, that was the plan they were built on.
Q Describe them?
A When I first came here they were using the mattress of the third design, and they were built on a gin which had poles over the end of the barge. They were built about thirty or forty feet, three courses at a time, and then they launched what they had done to the water's edge, and they built thirty or forty feet more, making a continual mat the entire length of the work. That describes the method of building.
18 Q Was any change made in that method, in the method of building the mattress?
A Yes sir. We were working under that method when the storm of August 27th, 1893, tore everything to pieces, and there were no gin barges left. Then, instead of rebuilding under the same method, the suggestion was made to build large barges, build the mattress on the barge.
Q (By Col. Gillespie): Who suggested that?
A I think I did. I think I made the suggestion, but of course, it was passed upon between Capt. Carter and the contractors. I dont know anything about what agreement was made, but I was told to go ahead on that suggestion. The scheme was to build large barges capable of carrying a suffi-

cient number of courses to build the entire dam at once, ten courses were built at once.

Q (By Capt. Gillette): For a certain length?

A Yes sir, for the length of the barges.

Q Are you familiar with the specifications as to the fascines to be used on those mattresses?

A Yes sir.

Q Were those fascines built according to the specifications?

A They were not, no sir.

Q In what respect were they not?

19 A They were not what you would call fascines of the best description. They were not trimmed, they were simply piled merely as they were found, with the leaves and everything left on them.

Q Were they choked anything like as tightly as the specifications required?

A I don't think there was much choking done at all. I think they were just tied up as well as they could.

Q Did Capt. Carter see the mattresses frequently?

A When I first came on the work, in 1893, he used to be there very often, twice a week, at least.

Q Has he seen them frequently up to the time of his departure from this district?

A Yes sir.

Q Did he approve or disapprove of the mattresses built?

A I believe they were satisfactory to him; I was told so when I first came on.

Q (By the chairman) Did he ever at any time give you any instructions in regard to those fascines, as to making them better?

A No sir, I was told that they were satisfactory.

Q (By Major Raymond): Give me your estimate of

20 the cost, the relative cost, of mattresses of the three designs, of the same size, and of the mattress as constructed, how much would a mattress of the first design cost, of any assumed size?

A A mattress of the first design is a log mat. I suppose a mat of that design 100 by 50 feet, which was the size they were using, would probably cost somewhere in the neighborhood of four hundred dollars.

Q 100 by 50 feet, single course mattress?

A Yes sir.

Q How much do you think a mat of the same size of the second design would cost?

A I presume it would cost about three hundred dollars, probably.

Q And a mat of the third design of the same size, what would that cost?

A About two hundred and fifty dollars.

Q About how much do you think the entire cost of the three course mattresses as constructed by the contractors under this contract, would be?

A I dont think it would cost more than one hundred and seventy dollars, probably.

Q This estimate is for the mattress in place in the—

21 A Yes sir.

Q Do you remember what Capt. Carter paid the contractors for this work, which you say is worth one hundred and seventy dollars?

A I dont know what the price was; I suppose it would be the contract price per square yard.

Q What would the cost of that mattress be?

A They usually run seventeen hundred square yards. I think the price was somewhere in the vicinity of a dollar.

Q (By the Chairman): How do you arrive at your figures in determining the cost you have given of the three different styles of mattresses?

A simply by my general knowledge of the work. Those figures probably should be made in detail. I just give them roughly; they may be wrong and they may be right; I would have to figure on them to be exact.

Q Are your figures determined from any knowledge you have of the cost of this work, the different kinds of work, or simply from a rough estimate; I want to know how you get at it?

A Simply a rough estimate, by a long experience on the work, but just as I said, if I had to verify them I would like to go through the details and figure it very much more ex-

22 actly.

Q (By Capt. Gillette) Did you ever know of inspectors being placed in the camps where the mattresses were made, were they kept there habitually?

A No sir.

Q Were they there at all?

A There have been one or two instances where inspectors were sent over to the camp.

Q For how long?
A I dont know. About two or three months, I guess, something like that.
Q Generally those mattresses were eight or ten courses, I think you said, on the Savannah harbor contract of 1892?
A I think they would average probably eight or ten feet in thickness.
Q How many courses?
A Eight courses, maybe.
Q As inspector, inspecting those mattresses, did you know what was in the interior of those thick mattresses?
A I could not see anything but the outside, I would have to judge by the general appearance of the outside of the mat; that was the only thing I could judge by.
23 Q Did you ever know of a mattress being hollow inside?
A Things of that kind have happened.
Q Did you see it?
A It was reported to me and I investigated and found it so.
Q What did you do about it?
A I told the contractors that that kind of work must be stopped; that they must not build mattresses with the brush left out, and that sort of thing.
Q Did you do anything about it?
A I carried the matter to Capt. Carter.
Q Did you write to him?
A I went to Capt. Carter personally, and told him that that way of building mats ought to be stopped, that they were leaving out some of the brush. I know of a man who went right down into the mat.
Q What year was this?
A In 1894.
Q (By Capt. Gillette): Did you mention it to Capt. Carter?
A I told him that that kind of work would have to stop, because everybody would know all about the irregularity and it would not do.
24 Q (By Major Raymond) You say that there was no way of finding out what was inside of the mat, and yet you say that it was so loose a man could fall through it?
A In this case.
Q Was the mat loose?
A The mat was loose. What I meant was that if the mats

were well put together, you could not see what was inside of them.

Q Do you think it was necessary to keep inspectors at the brush camp?

A That would be the proper place for them. That was where the mats were made.

Q The mats were built at the brush camp?

A Yes sir, the mats were built at the brush camp.

Q (By Major Adams) Did you have the specifications and the contract for this work?

A Yes sir.

Q Did you see that those specifications were carried out?

A In that regard I did not.

Q Why not?

A Because those mats were inspected by my superior officer, and I was told that they were all right.

25 Q Did you have any written instructions from Capt. Carter?

A About the mats?

Q About the work?

A At various times I had written instructions, but I could not say what they were now.

Q Did those written instructions involve any departure from the contract?

A No sir, not that I know of.

Q You had oral instructions?

A Yes sir, I did.

Q About what?

A In regard to those fascines.

Q About what, just what?

A When I went on the work in 1893, I was told to carry on the work in the manner I found it being carried on, and consequently I put in those bundles of brush just as I found them being put in.

Q (By Capt. Gillette) When you reported this matter to Capt. Carter, what did he do about it, did he take any official action, that you know of?

A No sir.

Q Did he take any official action?

26 A I think he wrote a note to Mr. Gaynor.

Q What made you think he wrote a note to Mr. Gaynor?

A Because the mats came in in a little better shape after

that, and I suppose he must have seen or written to Mr. Gaynor.

Q You say he saw Mr. Gaynor?

A I saw he wrote him a note or saw him?

Q Did he do anything at that time or say anything to indicate that he was going to write a note?

A I dont know.

Q You never had any official communication to show that he had taken any action?

A No sir.

Q Did Captain Carter ever prescribe what height the mattress should be made for certain numbers of courses?

A Yes sir; he gave me a memorandum, stating the number of courses and the height, in order to allow the contractors for—

Q Was that determined by the height of the mattress or the grillages?

A Both. There was a certain range that they were not allowed to go below.

Q About what did that table give for the average
27 height of a course?

A About a foot and a half?

Q Have you got that table?

A I have not got the original, I have got a copy.

Q Was it given you by Capt. Carter?

A Yes sir.

Q In the form of an official letter?

A No sir, just a pencil memorandum.

Q Were you ever instructed by Capt. Carter to allow a certain number of courses, or a certain number of mattresses, for a given height, irrespective of the division into courses?

A Yes sir.

Q Did you do it?

A No sir.

Q Why not?

A Captain Carter asked me when he was giving me this memorandum to allow them for a certain number of courses for a certain height, no matter how they got the height, and I told Capt. Carter I could not do it, because I would be certifying to something that was not so, and the mattress must have those courses.

Q (By Major Adams) When was that?

28 A I think it was in 1894 or 1895; I am not certain.

Q (By Capt. Gillette) In regard to the mats in the

Savannah Harbor, the contractors by the specifications are required to place them on the proper range, what method is used to get them on the proper range?

A After this new method was adopted?

Q On what you call the big contract, the contract of 1892?

A When this new method was first adopted, in launching those big mats, there was a great deal of trouble. The first scheme was to have tanks in the barges and turn the water in and dump the mat in that way, because those mats were very heavy, and would sometimes weigh 150 to 200 tons, and to avoid this difficulty the contractors suggested—the contractors' foreman suggested that it would be a good idea to drive piles, tie the mats up to the piling and pull the barge out from under the mat.

Q Was this done?

A Yes sir. I told the foreman if he wished to do it, he could do it, but I could not make him any allowance for this piling, as it was his own work he would have to pay for them himself.

Q Had this piling any use except to help the con-
29 tractors get the mats off the barges?

A None whatever. Sometimes they were used to locate the dam by, but they were not necessary for that purpose.

Q Did you report the number of those pilings so used?

A Yes sir, I was directed to do so.

Q By whom?

A By Capt. Carter.

Q Do you know whether they were paid for or not?

A I saw the estimate, otherwise I would not know. The records indicate that they were paid for.

Q (By Major Adams). Who made the estimates?

A I think Mr. Giesler made them up.

Capt. Gillette:—Mr. Giesler made up all final estimates in the office. I will submit later vouchers, showing that that piling was all paid for.

Q (By Capt. Gillette) So far as you know, in what form were those piles paid for, as single piles, linear feet of pile, or how?

A As linear feet of pile dam constructed.

Q (By Major Adams) When this point first came up. I understood you to first say that you didnt know whether this was paid for, and now you say it was paid for?

A I have seen the estimate.

30 Q You just now said it was paid for.

A I just spoke that way, I don't know whether it was paid for or not; I only saw the estimates.

Q (By Capt. Gillette) Estimate for linear feet of pile dam?

A Yes sir.

Q What does that mean; is there any provision for that?

A In that big contract there is pile dam built and paid for at so much per linear foot for piling.

Q Describe that dam and how it was measured?

A It was a dam built by means of two rows of piles, eight feet apart and eight feet apart in the row, making an average of one pile to every four feet of advance of the wall. The piling was paid for by the linear foot.

Q From the piling you can count how many feet of dam were built?

A You can count one pile for every four feet of dam, and two piles for every eight of dam. I remember they were paid for by the length of the dam, regardless of the length of the piling.

Q Under the present contract, was the specified quantity of stone, in your judgment, used on the mattresses?

31 A You mean the breakwater?

Q Yes sir?

A I dont think so.

Q Did you report that fact?

A I did.

Q When?

A In March of this year.

Q Did you report it to Capt. Carter?

A Yes sir.

Q (By Major Adams) Was any written report?

A Yes sir.

Q (By Capt. Gillette): Did he do anything about it?

A No sir.

Q Did he write any letter at all?

A No sir.

Q The work continued to have too little stone?

A Yes sir.

Q Did you again report it at any time?

A In June, I think it was, those mats were being destroyed by the storms from one end to the other, and I went to Capt. Carter personally and told him the breakwater was be-

ing destroyed and eaten by the teredo, and something would have to be done or he would not have any breakwater.

32 Capt. Carter wrote an official letter, ordering the contractor to put 200 yards on each mat, and a certain number of yards, I dont remember how many, on the old work.

Q (By Col. Gillespie) You say 200 yards per mat?

A Yes sir.

Q Was it a common structure, eight courses?

A Three courses.

Q On each three mats?

A Yes sir, on each three mats.

Q That is the common structure, three mats?

A Yes sir.

Q (By Capt. Gillette) Capt. Carter issued orders to have that done?

A He did.

Q Was that order carried out?

A It was not.

Q Why didnt you carry it out?

A Because the order was countermanded.

Q By whom?

A By Capt. Carter.

Q Orally, or by written order?

A Orally.

Q To whom?

33 A To Inspector Daniels.

Q Did you hear him countermand it?

A Inspector Daniels told me so.

Q How soon after the issue of the written order did he countermand it orally?

A I think it was on the same day.

Q Dam 31 has been extended to Turtle Island, what has been the effect of that on the Savannah Harbor, in your judgment, as an engineer?

A I think it shuts out some of the flood tide, and consequently, has a tendency to diminish the tidal range.

Q (By Major Raymond) I should like to ask you about those inspectors in the brush camps; did this absence of inspectors exist always, from the first time you were employed under Capt. Carter?

A I dont think there were any inspectors in the brush camps when I first came here.

Q You never made any general inspection at the brush camps?

A It was not customary to keep inspectors at the brush camps.

Q You were in local charge of the Savannah Harbor when those mats were put in there?

34 A Yes sir.

Q You were exercising a supervision over the work?

A Yes sir.

Q You know that there were no inspectors at the brush camps?

A Yes sir.

Q Did you ever invite the attention of Capt. Carter to the necessity of putting inspectors there?

A I think I have, occasionally.

Q You reported that it was necessary in your opinion, and that you could not certify exactly as to the nature of the work unless the inspectors were there?

A I have in one or two instances.

Q Did you certify to the proper execution of the work in your report which you sent in as local engineer, to Capt. Carter?

A Yes sir.

Q And upon your reports payments were made?

A Yes sir.

Q Didnt you have to certify that the work was properly done before payment could be made?

A I think the form of certificate was, "The above Report is Correct."

35 Capt. Gillette:—The Assistant Engineer writes on the report, "Checked and approved," the inspector. "I certify on honor that the above report is correct." The certificate on the bill which goes with the voucher is signed by Mr. Giesler; he knows of his own knowledge, nothing at all. Nowhere in the entire system of reports does any one report that the work has been done according to specifications, except by inference.

Q (By Col. Gillespie) These reports were simply measurements of the mattresses with the stones?

A That was what I understood them to be.

Q With no reference to the specifications at all?

A Yes sir.

Q For certain mattresses and certain cubic yards of stone?

A Yes sir.

Q (By Capt. Gillette) When you first came on the work, was there any necessity for inspectors in the mattress camps, the same as there was later on?

A There was not. When we were building those first mats, it was really not necesary. It would have been better but it was not so necessary as when we were building those large mats.

36 Capt. Gillette: The specifications called for fascines of a definite length?

A I think the size was anywhere from fifteen to one hundred feet.

Q Did they ever run smaller than fifteen feet?

A Not to my knowledge; I dont remember ever putting in less than fifteen feet.

Capt. Carter: When I first brought you down here, had you ever seen any work of this character?

A No sir.

Q Had you ever seen any fascines of this character?

A I have never seen any fascines.

Q What do you understand a fascine is?

A A Bundle of brush with the branches and leaves all trimmed off, as I understand it.

Q With the branches and leaves all trimmed off; when did you understand it that way?

A When I read your specifications.

Q When, how long ago?

A When I came back in 1888.

Q You so understood it then?

A Yes sir.

Q Have you ever been at the mattress camps?

37 A No sir.

Q So far as the building of fascines is concerned you had never seen it?

A No sir.

Q Have you had facilities for seeing how they were constructed and how they were choked in the mattress camps?

A No sir.

Q Have you had any facilities for determining the cost of the construction of those fascines?

A Yes sir, I have somewhat, when they were building those bundles of brush in the first instance at Brunswick.

Q Were you there long enough to make any estimates, would you consider yourself justified in determining the cost of the work in a mattress camp?

A I think I would, from the information I have got.

Q Where did you pick up such information?

A From the contractor's foreman and from men who have been in the camps.

Q Have you ever said to any one that the work that was being done was satisfactory?

A I dont know whether I have or not.

Q You dont remember that?

A No sir.

38 Q Have you ever said to anyone that it became necessary for the contractors to build better mattresses than were required by the specifications, otherwise they could not get them in; that the mattresses that were good enough for the contractors were good enough for the United States?

A I remember that somebody said you said so.

Q Did you ever say that?

A I dont think I ever did, unless I repeated what somebody else said.

Q Do you remember whether you ever did or did not say that?

A I dont remember every saying it, no sir.

Q You say that the inspectors were not as necessary in the mattress camps in the beginning as they are now?

A No sir.

Q How were the mattresses built in the beginning?

A Loose mattreses.

Q Where were the mattresses, in the water or in the air, where they could be seen?

A On barges where they could be seen.

Q In the beginning were they where they could be seen?

39 A They could be seen in the water.

Q Underneath the water, with brush on top of them?

A Yes sir, very often they would float high enough to see the ends of the logs.

Q You say that the bundles or brush were not choked but tied by hand?

A That is my belief.

Q Why do you believe that?

A On account of the general appearance of the bundles. They didnt have any appearance of being choked.

Col. Gillespie: You mean compressed?

A I mean being compressed with the choker.

Q So as to have smaller dimensions than they naturally would.

A Yes sir.

Capt. Carter:—You have seen blue prints of the form of choker devised to be used in the construction of those fascines?

A Not that I know of.

Q In some instances you recommend deductions in the mattress work?

A Yes sir.

Q Why did you recommend such deductions?

40 A What do you mean, in the large mattresses?

Q In the various mattresses, large and small.

A Well, in some instances the mattresses didnt come up to the instructions which you gave me to go by, and I recommend deductions for that reason. You gave me instructions that they should be a certain height, and when they did not come up to that height, I recommended deductions.

Q Any other instances?

A Possibly so. I dont remember. If you can cite an instance, I might say.

Q When the mattresses were a departure from a certain type of mattress, did you not order that a deduction should be recommended?

A Yes sir.

Q When a mattress did not come up to the standard, did you not recommend a deduction?

A Yes sir.

Q If it fell below it, you should recommend a deduction?

A Yes sir, a certain standard given to me by you.

Q Were not those fascines satisfactory to me?

A I suppose they must have been, or you would not

41 have approved them.

Q Do you know my reasons for constructing the mattresses as I did construct them?

A No sir.

Q Have I been in the habit of giving you my reasons for what I have done?

A Not always, sometimes.

Q You stated that you recommended that the amout of stone should be increased, because the work was not standing up properly?

A Yes sir.

Q Did I agree with you or not?

A I dont know.

Q Are you sure of that?
A I made a report to you—
Q Orally, in the office?
A You doubted the facts, it seemed to me that you doubted the fact that they were not standing up. I dont know whether you did or not, but it appeared to me that you did doubt it.
Q You say that it was in 1882 that I brought you down here?
A Yes sir, I think it was in 1882—that was in
42 Leavenworth, Kn.
Q Do you think that I would have brought you down here and put you on this work, if I had not had confidence that you would do what was right?
A I dont think that you would.
Q As a matter of fact, did I not rely absolutely on you when you told me anything?
A I think you did.
Q I relied upon you to tell me whether things were done properly or improperly?
A I suppose you did.
Col. Gillespie: Did you ever see any drawings of the mattress of the character that went into the work, or were you simply supplied with specifications?
A I was simply supplied with specifications.
Q You never saw a drawing of the type that you were to build?
A Not that I know of.
Capt. Carter: As a matter of fact, when you first came here, were not the tides troublesome to you?
A I never had been on tidal waters before.
Q Were you not taken down on the work and shown how the work should be done?
43 A Yes sir.
Q And the kind of work which I intended the specifications to cover?
A Yes sir.
Q Have you tried to carry out those instructions, or have you tried to make me believe that you tried to carry them out?
A That is exactly what I did. When you told me what was to be done, I did it. I was under your orders entirely.
Q Suppose you had been handed those specifications when you came down here, and you had not until then been on the

work, do you think you would have been competent to interpret them?

A I dont think I would.

Q Was it not considered universally by yourself and assistants that the kind of work which was desired was considered by me to be for the best interests of the service?

A Yes sir.

Col. Gillespie: Did Capt. Carter ever speak to you on that subject?

Capt. Carter: About the use of the mattresses or anything of that kind?

44 A Yes sir.

Q (By Capt. Carter) Did you not report that the mattresses, especially the Cockspur Island training wall, was filling in beautifully and suited the purpose admirably?

A I think so, and I think so yet. I think that the loose brush mat is preferable to the military fascine for filling in.

Q Have you ever seen a military fascine built in a mattress?

A Yes sir, since Capt. Gillette has taken charge.

Q Have you ever seen one before?

A No sir.

Q Those fascines do not come up to those military fascines?

A No sir.

Q Which do you consider is the fascine contained in the specifications?

A The fascines that are now being built are evidently what were intended by the specifications. There is no denying that.

Q As interpreted by whom?

A As interpreted by anybody. It calls for regular fascines.

45 Q What is a regular fascine?

A A bundle of brush that must be straight and well trimmed of branches and leaves, choked every two feet.

Q Trimmed of branches and leaves?

A Yes sir.

Q Would you with your experience put in the work fascines trimmed of all branches and leaves for the collection of this mud?

A Up in the upper river, I think not. I think the bundles of brush just as good.

A Dont you think a man framing a specification would frame it to get what he thought was best?

A Yes sir.

Col. Gillespie: I think you are confusing the witness.

Major Raymond: I think the question is pertinent.

Major Adams: Are the questions asked by Capt. Carter confusing you?

A No sir, I think I understand the case very clearly.

Major Adams: I would be glad to have the witness answer the questions put by Capt. Carter.

Capt. Carter: When you came here you were brought here, not because of your knowledge of the work, but because I
46 thought you were honest?

A I think you did.

Q Because I thought you would report the truth about matters?

A Yes sir.

Q Have I not again and again told you that if a contractor attempted to do anything improper, to let me know; have you not understood that you were put there to see to the interests of the government?

A Yes sir.

Q Do you not know, as a matter of fact, that if any contractor was attempt to approach any one, and I ascertained it, that man lost his place immediately?

A I could not say that?

Q Dont you know that?

A I could not say that, no sir.

Q Have you ever favored the contractor?

A In a certain sense of the word I have; in one sense of the word I think I have.

Q Have you not been instructed that under no circumstances should you be under any obligation or give favors to the contractors?

A I think when I first came here I was given instructions of that character.

47 Q Have those instructions ever been modified?

A I dont think they have.

Q If they had been, are you the kind of man who would have accepted service under circumstances of that kind?

A I never have accepted services from any contractor of any description whatever.

Q You say that you received orders when you first came here that under no circumstances were you to be under any

obligations, or show favors to the contractors; I asked you whether those orders had ever been modified, and you said they had not. If those orders had been modified and you had been instructed to do anything improper, would you have resigned, or would you have gone ahead doing the work?

A I would have gone ahead doing the work ordered. If I am working under somebody else, and he gives me an order, I am not responsible for that order. The one who gives the order is responsible.

Q You say that you reecived orders in the beginning that you should never under any circumstances allow contractors to do anything improper, and you say that you have never received any modifications of thise instructions, I ask you if you are the sort of man that would continue in any em-
48 ployment if you were given instructions to do what was improper?

A If I received instructions, I would hold the man responsible who gave the order, I would not think that I was responsible for it.

Q Then you would do an improper thing?

Capt. Gillette:—I would like to know what you mean by "improper"?

Capt. Carter: Show favors to contractors.

Q Have I not told you at various times that the interests of the United States must be first protected, and that after that if a contractor could devise means to make money, he could do so?

A Yes sir.

Q That you could allow him anything so long as it didnt interfere with the interests of the United States?

A Yes sir, I received instructions that I was to be more liberal.

Q That you were to be more liberal, in what way?

A In regard to the height of the mat.

Q Did you not say that you received a certain height of mattress as a standard?

A Yes sir.

49 Q Did you not say that you conformed the height of the mattress to that standard?

A Yes sir, I did absolutely conform to that height. If the mattress didnt come up to the height deductions were made by me.

Q Do you mean to say that you—

A I mean to say that the last work was favorable to the

contractor. The way the fascines were built was favorable to the contractor.

Q That I am responsible for?

A You are responsible for it and not I.

Q What thickness was required by the specifications?

A Nine inches in diameter.

Q Whereabouts, at what point?

A Measured anywhere, the diameter of the fascine.

Q The diameter of the fascine varies, suppose it was choked to a diameter of nine inches, where would you measure it?

A I would measure it at the end.

Capt. Gillette: The specifications answer that question.

Capt. Carter: A fascine which is nine inches at the point at which it is choked must be how many inches larger?

A If the fascine was choked to nine inches, it would
50 not vary more than half an inch, if it was choked only two feet apart.

Q Have you ever known an inspector on the work to be reprimanded for accepting any favors from the contractors?

A Yes sir, I think I have.

Q Have you ever known of an inspector on the work who would have dared to let me know if he did accept any favors?

A I don't think he would care to have you know it.

Q Why?

A Because they knew that they would be reprimanded for it?

Capt. Gillette: Have you ever known of a case where Capt. Carter did know of it, where an inspector asked for favors of the contractor?

A Yes sir, I know one case.

Capt. Carter: What one?

A Mr. Hall.

Q What favor?

A Capt. Carter showed me a letter from Mr. Hall to Mr. Gaynor, stating that he wanted Mr. Gaynor to give him $75.00.

51 Q I showed you a letter to that effect and asked you about Mr. Hall.

A I wanted you to raise Mr. Hall's pay, and you thought Mr. Hall got enough pay.

Q He was inspector under you and you recommended an increase in his salary?

A Yes sir.

Q Didn't I ask you if you thought Mr. Hall was absolutely honest?

A I dont remember. After seeing that letter, I thought he ought not to be trusted.

Q Did you not say that you wanted to retain him on the work?

A I dont remember about that.

Capt. Gillette: You say you saw a letter from Mr. Hall, asking for $75.00. Didn't you testify a moment ago that any inspector who accepted any favors from a contractor would be immediately reprimanded?

A It was very often done.

Q Did they discharge Mr. Hall or keep him?

A They kept him.

Q Do you know whether he reprimanded him or not?

A I don't know, I suppose he did.

52 Capt. Carter: Do you remember the dam between Marsh Island and Hutchison island?

A Yes sir.

Q Do you remember having any difficulty in connection with that?

A A Very serious difficulty.

Q Do you remember attempting to hide from your superior officer and cover up some work you had done there?

A No sir. I didn't attempt to cover up anything. I made a couple of mistakes there, but I didnt cover it up.

Q Do you remember having given certain instructions to a man while I was away, and when I came back denying that you gave those instructions?

A No sir. That closing dam of which you speak I attempted to close all at ance and the attempt was a failure. I didn't make any apology for it; I simply said I had made a mistake and ought not to have made the attempt.

Col. Gillespie: Coming back to the drawings; did you ever see, either in the hands of the inspectors, or any of the assistant engineers, or in the hands of the contractors anything in the shape of drawings representing the style of mattress

53 that was used?

A I heard of them, but I never saw them. I heard the draughtsman tell about making it.

Q In this office?

A Yes sir.

Q You never saw it in the hands of the inspectors or the engineers?

A Not that I remember of.

Q You never saw it yourself?

A It is barely possible that I have ever seen it, but I have not the slightest recollection of having seen it.

Major Raymond: You first entered the service of Capt. Carter in 1882?

A Yes sir.

Q Then you were out of his service and in again repeatedly?

A Yes sir, three different times.

Q Now you say in this letter to Capt. Gillette, this letter dated August 7, 1897, that in your opinion he has yielded to temptation, and probably allowed the contractors to do as they liked in exchange for their influence and power to "boost him along." When did you first become aware that Capt. Carter was showing favors to the contractors.

54 A I think it was the time that Mr. Brown was discharged, in 1889.

Q Subsequently, did you leave Capt. Carter's service, after 1899?

A Yes sir, I left in 1890.

Q Then you came back in what year?

A In 1893, two or three years afterwards.

Q When you came back, you came back, I understood you to say, on Capt. Carter's invitation?

A Yes sir.

Q Was there some correspondence between you and Capt. Carter in reference to your re-employment?

A He wrote me a letter asking me to come back.

Q And you answered it?

A Yes sir.

Q Did you write several letters on that subject?

A At that time I only wrote one.

Q Did you express any desire to come back again, or was it in conformity to Capt. Carter's wishes that you came again?

A He made a direct offer, that was in 1893. I was then serving as city engineer at Duluth.

55 Q You came back?

A Yes sir.

Q And yet you had every reason to believe that Capt. Carter was a dishonest man?

A I cant say that. Some cases looked suspicious.

Q You thought when you were in the service before that he was conniving with the contractors?

A There were some things that led me to suspect that possibly he was, but when I received that notice, I thought I must be mistaken, and that it was all right, and I must be wrong in my suspicions.

Q Your suspicions were not strong enough to justify you in arriving at a conclusion?

A No sir.

Q When you became satisfied Capt. Carter was doing this thing, you wrote this letter?

A I had not been here very long before I was convinced there was some understanding.

Q And yet you say in this letter, "The mischief is not serious." Dont you think the mischief is serious if an officer defrauds the government?

A Everything was accomplished that was expected to be done; it was simply a question of price.

56 Q Where did you work before coming into the service of Captain Carter in 1882, what experience did you have before that?

A I graduated from the University of Wisconsin in 1881.

Q In the engineering department?

A Yes sir. I first went to work with the American Bridge Company in Chicago, and I worked for them for about four months, when one of their patrons coming out from Mexico, said he wanted some drafting, and I went to Mexico and went to work on the Mexican National Railway, and stayed there for something less than a year. Then I came back North, and went to work with the Cleveland Car Works of Cleveland, Ohio. After that I went to work for the Nickle Plate Road and worked for it some time. About this time I saw an advertisement for a topographical engineer, and I answered it and got the position under Capt. Carter.

Q You never did any work on the Atlantic coast north of Savannah?

A No sir, my first experience in river and harbor work was in this department.

Q What reason have you to think that Capt. Carter did anything in favor of the contractors in exchange for their

57 influence and power to boost him along?

A Well, just that in the building of those mats.

Q In what way have the contractors boosted him along?

A I suppose by their influence in Washington.

Q Do you know any way in which Capt. Carter has been

"boosted" along different from that in which every officer is "boosted" along?

A I suppose by getting that appointment.

Q What "boosting" he had got from the contractors you dont know?

A No sir, I dont know.

Q What "boosting" do you think he has got?

A I suppose they might have helped him get appointed on the Nicarauga Canal Commission.

Q You think that's a good thing to have?

A I suppose so.

What reason have you to think that, any other reason except your own notion; have you any reason to suppose that they helped him get that appointment?

A No, except that I know that he was worked along getting appropriations.

Q You have no reason whatever except your own no-
58 tion?

A No sir, just inference.

Q Have you any reason to believe that Capt. Carter ever received any consideration, pecuniary or otherwise, from those contractors, or any contractors?

A No, excepting that the general tendency of everything would seem to indicate that.

Q What do you mean by that "except the general tendency of everything?"

A Nothing except the general current of things.

Q Your letter seems to insinuate these things and I want to know on what grounds you make the insinuation?

A There is no direct thing that anybody can say, there is just simply the fact of the character of the work.

Q Was there anything outside of the character of the work that impressed your mind with that idea?

A I know that Capt. Carter and Capt. Green were very friendly. I know that there were a good many favors shown on their contract, and the other contractors were held rigidly to the specifications, and that would naturally lead me to suppose that there possibly was favoritism.

Q That is the only basis you have for making this assertion?

A Then those contracts were usually drawn up in
59 such a way as to be more favorable for those men to bid than anybody else. Contracts were often arranged, you might say, especially for their benefit.

Q In what way?

A Take for instance, the Brunswick or the Darien work in 1893 or 1894, I dont remember which, and there is a clause in the specifications which says that the piles were to be from two to eight feet apart, and that the depth of the water was from six to twenty-five feet. No contractor who did not have inside information could bid on that.

Capt. Carter: Is not that true that the water at Darien is six to twenty-five feet deep?

A On that contract no piles were driven in 25 feet of water.

Q Do you know anything about it?

A I had charge of it.

Q Between what depths did they run?

A From about eighteen to six feet.

Q They did not run less than six feet?

A There were some driven when there was no water at low tide.

Q They ran from nothing to how many feet?

A About eighteen feet.

60 Q What was the rise of tide?

A I am speaking now about the depth below mean low water.

Q What was the rise of tide?

A Seven and a half feet.

Q Eighteen feet at low water would make how much at high water?

A About twenty-five feet.

Q Did not every contractor who came here have access to all the records in the office that he wanted?

A No sir, not that I know of. Everybody in the office was instructed not to give them information.

Q Do you know of any case where a contractor came to me and wanted to know about the work where he didn't get every information concerning it?

A Yes sir.

Q Who?

A Mr. Hancock.

Q Who told you?

A Mr. Hancock.

Q In what way did he not get information?

A He came here to get information to bid on this breakwater, and he didnt get what he wanted.

61 Q What did he want?
A He asked for specifications.
Q Where did you get that information?
A Mr. Hancock told me.
Q You know it simply from Mr. Hancock?
A Yes sir.
Q You say that Mr. Hancock did not get the information he desired?
A He came up and asked for the specifications, and you didnt want to give them to him.
Q Was there anything else that he asked to see, any of the plans of the work or annual reports?
A I dont know whether he did or not.
Q What you do know is simply what Mr. Hancock told you, that he could not get papers to bid on the work?
A Yes sir, and that you had discouraged him by the general way in which you talked about the bidding.
Q Anything else?
A That you told him that he would have to have a plant of $100,000.00 to do the work with.
Q This is the information I gave him concerning his work?
A Yes sir.
62 Q Then you simply state that he could not get papers to bid on the work and that he was discouraged?
A Yes sir.
Q Anything else?
A No. Not that I know of.
Q Do you know anything except what somebody told you?
A No sir, not about that.
Q Do you know anything about anybody else?
A Yes sir.
Q What?
A What do you want?
Q You say that the contracts were drawn so as to be more favorable to the Atlantic Contracting Company than to other bidders?
A Because they have inside information. Take the rock question on the breakwater, they prohibit Florida rock.
Q Were they not drawn up for the express purpose of bringing in Florida rock; have you not reported that Florida rock was the best?
A No sir, I did not.
Col. Gillespie: What clause in the specifications prohibits Florida rock?

A There is a clause in the specifications which says
63 that the rock shall weigh one hundred and fifty pounds a cubic foot, and Florida rock wont average more than one hundred and twenty.

Capt. Carter: First you said that the depth of twenty-five feet was not correct and afterwards you said it was correct? Was not the depth of the water ascertainable by everybody?

A It was not practicable for everybody who went down there to make a survey.

Q Couldnt he come to the office?

A That wouldnt do him any good. I remember one instance where a man came to the office and went to Mr. Giesler to get information, and Mr. Giesler was not allowed to give it to him.

Q Who was that man?

A A man from Major Adams' office.

Q When?

A Just before the date of the letting of the Darien contract.

Major Adams: You say he was from my office?

A I don't remember his name, Mr. Giesler told me his name, but I have forgotten it. He was formerly assistant engineer, under Major Adams.

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64 GIESLER, called:

Capt. Carter: Mr. Giesler, evidence has been given here by Mr. Cooper that before the opening of the bids in 1895, for Darien harbor, some one came here from Major Adams' office and asked for certain information which you would not give him; do you remember that man's name?

A That must be a mistake.

Mr. Cooper: You told me his name yesterday.

A You mean from the former Chief of Engineer's office, Col. Craighill's; I think the man's name was Bourguin?

Capt. Carter: What did he come to you for?

A For the Darien specifications. You came in while I was speaking to him. He was asking for certain information which I could not give him, and while we were speaking about the matter, you came in, and he went away with you. I

suppose you talked the matter over with him. He asked me several questions about dark points in the specifications which he could not understand, and in regard to which I could not give him any information.

Q Because you didn't know the facts, or because you were not allowed?

A Because I did not know them. One of the doubtful
65 points was the piles. You remember that they were to be anywhere from two to eight feet apart, and he wanted to know how far they were to be apart, and of course, I could not tell him.

A. S. COOPER (Continued)

Capt. Carter: What other reason have you for saying that those specifications were drawn up in such a way as to give the Atlantic Contracting Company an advantage over other people?

A That is my belief.

Q Why do you believe it?

A From what I saw and observed.

Q What have you seen and observed?

A. Those men always got inside information that other people couldn't get.

Q What inside information?

A In regard to the work and how it was going to be done. You asked me for a case and I gave you a case.

Q You mean the Florida rock? Do you know that the Atlantic Contracting Company knew that Florida rock was to be used, and that other people knew that it was not to be used, and that other people knew that it was not to be used or understood that it was not to be used.

66 A I dont know what other people understood.

Q If no distinction was made, how could they have an advantage over other people; you must have some reason for thinking that they had inside information. What reason have you for thinking that?

A Because the Florida rock was allowed, and according to those specifications, it should not be allowed. If you had wanted to, you could have ruled out Florida rock on those specifications.

Q Did I rule out Florida rock?
A No sir.
Q Then in what way did the Atlantic Contracting Company have any advantage that other people didn't have?
A Because they knew it before.
Q Do you know that other people didn't know?
A I dont know what other people knew.
Q You say that they had an advantage over other people?
A Because the Florida rock could have been absolutely ruled out by those specifications.
Col. Gillespie: Is Florida rock considered a cheap rock?
A Yes sir.
Q Is it easier quarried?
67 A The quarries were near at hand and it was easier quarried.
Q What was the next cheapest stone that could be got?
A Georgia granite.
Q How could that be delivered?
A By rail.
Capt. Gillette: It is all delivered by rail.
Capt. Carter: In what other way was the Atlantic Contracting Company favored by drawing up the contracts?
A According to my idea they had been favored, by being allowed to do things that they ought not to have been allowed.
Q In what way were they given favors over other contractors?
A By getting inside information.
Q What inside information?
A All the facts about the work they were doing, exactly what was going to be done, which other people, I believe, didn't have.
Q Why do you believe this?—you dont believe it without some reason?
A I know the one instance of this man who came here to get information and could not get it.
68 Q Any other reason?
A No.
Q If you know of any other reason, I want to know it all?
A The bids always appeared arranged.
Q Why, what do you mean?
A The figures show it. They were too close to have been honest, square bids. They could not have been honest, square bids.

Q Is that necessarily true?

A I dont know how it could be otherwise, if they bid within a few cents of one another.

Q You never knew contractors to do that?

A Not so close as that. One man always got the work. The result has always been the same.

Q In what way does that show that these men had any advantage?

A There were half a dozen different contractors bidding, the figures were always within a few cents of each other, and the Gaynors always got the contract.

Q (By Col. Gillespie) Were those contracts always in the same name?

A Not always. Sometimes they were in the name
69 of of the foreman, sometimes in the name of John F. Gaynor, sometimes in the name of Green & Gaynor, and sometimes in the name of the Atlantic Contracting Company.

Q Those various contractors always used the same identical point, indicating that they were same company?

A They always used the same plant, or they used what was left of it.

Q They practically used the same plant?

A They practically used the same plant. I can't prove that there was any understanding between Capt. Carter and Capt. Green, all I can say is that I believe it.

Q Because the figures always ran right along close to one another?

A Yes sir.

Q You say that showed that the contractors had inside information?

A If it didn't show that, it showed that they had everything arranged with the other bidders, or the other contractors.

Q Assuming that that is true, how does that show that they had any inside information?

A That dont show it.

70 Capt. Carter: What does show it?

A I can tell you another reason, Mr. Connolly, who got his position through Green & Gaynor, as I understand it—

Q Who told you that?

A I dont know. Mr. Connolly drew up the papers for the Atlantic Contracting Company, he always drew them up. Anything they wanted out of this office, they would go to Mr.

Connolly for, and Mr. Connolly didn't give any information to anybody else.

Col. Gillespie: What do you mean by "drew up the papers."

A Drew up the bids.

Capt. Carter: Connolly drew up the bids for the Atlantic Contracting Company?

A He did, and he told me he did.

Q How long ago did Mr. Connolly tell you that?

A About two years ago.

Q (By Col. Gillespie) Dont you know that the regulations positively prohibit that?

A Yes sir, I do.

Q You knew that and didn't report it?

A Yes sir.

Q You say that Mr. Connolly got his place through Mr. Gaynor?

71 A I can't tell you exactly who told me that, whether it was Mr. Gaynor or whether Mr. Connolly told me himself.

Capt. Gillette: You got it through Mr. Green or Mr. Gaynor?

A Through Mr. Gaynor—I think Mr. Connolly told me himself.

Col. Gillespie: Mr. Gaynor being a contractor at that time?

A Yes sir.

Capt. Carter: I advertised for a typewriter, and got the names of various people who submitted samples of their writing, and this man was hired in that way.

Q (By Capt. Carter) What other reason have you for thinking that they had inside information?

A That is the reason I believe that they had inside information. Mr. Connolly gave it to them. I know he did in some instances. He told me he did.

Q Information of what kind?

A About the work, as to what was to be done.

Q What did Mr. Connolly know as to what was to be done?

A I dont know. That is for him to answer and not me.

Q Is there anything else, any other reason for your belief; I want to get at them all?

A I can't give them all.

72 Q If you thought this sort of thing was going on, why didn't you come and tell your superior officer?
A I didn't think it would do me any good to tell them.
Q You didn't make the plans for this work?
A No sir.
Q Were you anything but practically an inspector?
A I had charge of the construction work.
Q In what way?
A I put in the work.
Q You were ordered to place a dam in a certain place and in a certain way?
A And I built the work.
Q You saw that the contractor built it that way?
A Yes sir.
Q Had you anything to do with the formulation of the plan, with the obtaining of the result, or with the planning as to how the work should be done, were not orders always given you as to how you should do it from the office?
A They were.
Q What do you mean by saying that you did the "bulk of the work" yourself, as you say in your letter?
A I mean the construction work.
73 Q You were ordered to do it and you did it as you were ordered?
A I built it.
Major Adams: You built it or the contractors built it?
A On the construction work I can come pretty near to saying that I did it myself.
Major Raymond: Then you are reaponsible for it?
A No sir the idea is this. The material was sent down there, and the contractors had a foreman there; what I mean is this that I did considerable head work, the planning as to how his plant should be arranged to the best advantage he did; I didn't mean that I had charge of the work in that sense.
Major Adams: Were you at any time working for the contractors?
A Not in that sense. I helped him a good deal in planning the work.
Q At his request?
A No sir.
Q Did you get any compensation for it?
A No sir.

Q Were you sent there for that purpose?

A No sir. I went there to do the work, that is to
74 the engineering work. What I mean to say is that in the execution of the work, the foreman was a man of not much ability, and a man who made a great many mistakes, and I would see his mistakes and rectify them; I would aid him by telling him that he could do it better by doing it so and so.

Col. Gillespie: Was the contractor represented on the work by an ignorant man?

A I dont know that I could say that he was an ignorant man. His ability was not very high.

Q What was his name?

A Well sir, he is a cousin of the contractor; his name is John Gaynor.

Q He is not interested in the contracts?

A No sir.

Q Was any other relation of the contractors on the work, either at the camps or on the work?

A I dont know what relations Edward Gaynor had—he was the Treasurer of the Company.

Q Where did he habitually reside?

A In Savannah.

Q How frequently was he on the work?

A I very seldom saw him on the river.

Q John Gaynor was the only Gaynor on the work?

75 A He was foreman in charge of putting the work in. What I said was that a good deal of that work I oversaw myself, that is I helped him in order to facilitate the work, and get the work done that much quicker.

Capt. Gillette: So in the execution of that work, as Assistant Enginer for the government, you gave them any assistance they needed?

A I did.

Q Why did you do so?

A To help the work along.

Q Ought not the contracts to have had men there to do the work that you did?

A Yes sir.

Major Raymond: Is it not the custom in every engineer's office for the assistant engineer to have instructions to aid the contractor in every way possible?

A I dont know.

Capt. Carter: Did not the contractors always have men whom he considered responsible, in charge of the various portions of the work?

A Yes sir, he did.

Q You considered, however, that his ability was not up to the standard, and he accepted your advice?

76 A I believe he did, at least, they adopted my suggestions in almost every case.

Q Then this work was carried out according to your suggestions?

A In the method of putting it in, it largely was; there is no doubt of that.

Q Did the contractor have any representative at any other place on the river, was this the only man they had, this man, John Gaynor, didn't they have a lot of other foremen?

A Yes sir.

Q You say that you think my position on the Nicaragua Canal Commission was due to the influence of the contractors; what else have they done to "boost" me along?

A I dont know that they have done anything.

Q You say "he has yielded to temptation?"

A That is my belief.

Q And probably allowed the contractors to do so and so; what other way do you believe they tried to "boost" me along?

A By their influence at Washington.

Q In what way?

A I couldn't say.

77 Q If you think they "boosted" me along, they must have "boosted" me along in some way, you mentioned the Nicaragua Canal Commission, can you think of any other way?

A I suppose the appointment to London, probably.

Q Do you know that they had anything to do with it?

A No, I just think so.

78 PAUL E. TWIGGS called by Capt. Gillette, testified as follows:

Q (By Capt. Gillette) Tell approximately the date of your first employment under Capt. Carter in this district and the history of it, giving dates?

A I dont know that I can give the exact dates; I came over here, I think, in March, 1892, if I am not mistaken.

Q From where?

A From Georgetown, S. C. I had been employed in the government service there under Capt. Bixby. I came over here some time after that to get employment from Capt. Carter. At the time I came over he had nothing for me to do, and I went home; and shortly, perhaps a month or a month and a half, afterwards, he wired me to come here.

Q Have you been employed off and on ever since?

A Yes sir; ever since I came over here I have been in Capt. Carter's employ.

Q Have you been inspector for using the mattresses under Capt. Carter?

A Yes sir.

Q In the Savannah river?

A Yes sir.

Q Were you furnished a copy of the specifications?

79 A Yes sir.

Q Were the instructions carried out in the construction of the fascines used in the mattresses?

A Under certain circumstances they were, and under certain circumstances they were not. I will state what I mean:—I had the specifications and I understood them. There was a clause in the specifications which I noticed very particularly and called Capt. Gillette's attention to it. That was that the material used in the construction should be satisfactory to the engineer in charge. I will state that I based my building and used the mats upon that clause in the specifications.

Q Was the mattress constructed in accordance with either of the three designs described in the specifications?

A Leaving that clause out?

Q I asked you if it was like any of the three designs described in specifications;—were the mattresses built according to any of them?

A No sir.

Q What one did they come nearest resembling?
A The third.
Q In what way did they differ from the third?
A As I understand the construction and making of
80 fascines, as I have been instructed,—if I am allowed to bring this in,—in Georgetown and according to the specifications, which are very much alike, they should be constructed out of brush, choked down to nine inches. I think the specifications called for "approved" chokers, and choked to nine inches. I think these specifications called for tarred rope, and we used annealed wire. Those fascines that we made over there were military fascines, and the brush was trimmed up.
Q (By Major Raymond) That was at Georgetown, under Capt. Bixby?
A Yes sir; I was then there. These fascines were not choked, or if they were choked, they were certainly choked very light. The material used in tying was simply yarn rope, I should say,—I don't know what else to call it; a single strand of rope yarn, varying in distance from two sometimes three and somtimes three and a half feet apart.
Q In this Savannah river?
A Yes sir, in the construction of those fascines; that is my opinion; that is what I say.
Q (By Capt. Gillette) Were the bands sufficiently tight?
A No sir; they were very loose.
Q Could you have pulled them off without untying them?
81 A If everything had been trimmd up, so that there were no branches or limbs that projected, you could have slipped them off.
Q Without much trouble?
A Yes sir.
Q What were Capt. Carter's instructions to you as to how the fascines and mattresses should be built?
A I don't know that Capt. Carter gave me any instructions in regard to the building of the fascines and mats. Capt. Carter came on to the work about two or three times a week, and I claim that I built or saw that the fascines were built and mattresses constructed according to Capt. Carter's wishes.
Q Did he ever tell you in words what kind of fascines he wanted or did not want?

A He told me when I took charge of the work, that the fascines were not to be military fascines.

Q Did they fulfill the conditions of the contract, and were they made, in your opinion, as they should be?

A I don't know; I presumed they were all right, as Capt. Carter had seen them as much as I had or more, as he was here longer than I was. They satisfied him, and they were therefore, satisfactory to me.

82 Q Did he give you any instructions as to being rigid or otherwise with the contractors?

A When Capt. Carter came and removed me from the dredge to take charge of the jetty work at the lower flats training wall, he told me in taking charge, that the fascines were not to be military fascines, and that he did not wish the contractors pressed: I think that was the word,—"Pressed"—I wont be positive, but something to that effect.

Q How long were the fascines as you saw them used?

A The fascines were usually floated down on an ordinary lighter.

Q Not made into mattresses?

A The fascines were made into mattresses and floated down in the same way. The lighters, I should say, ranged from eighteen to twenty-two feet, and they were placed cross-ways on those lighters.

Q In carrying those fascines, how many men did it take?

Q How do you mean?

Q Could one man pick up a fascine and put it in place?

A No sir; not well.

83 Q It was too heavy?

A It seemed too heavy. It would take two or three, and I have seen four men take hold of a fascine.

Q They were flexible?

A Yes sir.

Q What kind of material was used in them?

A There were a good many pine tops, good many oak brushes, sassafras bushes, myrtle, gum bushes;—I have seen all of them.

Q Suppose you wanted to take a fascine and wanted to pull it in two in the middle, how many men would it take on each end, in your estimation?

A One. I could have taken two men, one on each end, and if they pulled pretty hard, they could have pulled it in two. I never tried it, and I don't like to say positively that it could be done, but that is my judgment.

Q Did you ever try to walk across the top of an eight or ten course mattress on the barge?

A Yes sir; on one occasion.

Q Did you sink into it?

A Yes sir; I sank down over my head; I had to climb to get out.

Q You went clear through it?

84 A I may have done so; I had to reach up, this way, over my head (indicating) so I suppose I sank over seven or eight feet until I struct on a hard substance; I cannot say whether it was the top of the lighter or not. The lighters are all covered with brush and leaves. I did fall through one and that was the way it happened.

Q (By Capt Carter) Did you ever find a mattress in which you thought there was more material put into it than was required by the specifications, and recommended an increased allowance?

A Yes sir.

Q Was it allowed?

A Not that time, sir.

Q The instructions given you then were, were they not? to do all you could while there to see that the interests of the United States were protected, and in doing so, if you could give any assistance to the contractor in a legitimate way, to help him facilitate his work, you could do so?

A Yes sir.

Q Your first duly was to look out for the United States, and then afterwards, if consistent with your duty, you could give any facilities to the contractor that were proper?

A I think that is right, sir.

Q You carried out these instructions to the best of your knowledge and ability?

A Yes sir; I did it according to the way I thought you wanted it done.

Q You say that the fascines built by me were not the same as those built by other officers?

A No sir; because the fascines at Georgetown were military fascines.

Q Do you remember a case of this kind?—do you remember that there was a certain amount of work being done at the closing dam here between Marsh island and Hutchinson island, under the supervision of Assistant Engineer, A. S. Cooper, where the mattress work did not come down to the bottom, and an attempt was made to hide it from me?

A I remember the circumstances which you relate, but not exactly as you state it.

Q I may be mistaken as to the details?

A I will state what it was as I remember it. I was on the Tomachichi dredge, near the Central Railroad, and Mr. Cooper was in charge of the jetty work, and intended to close the spur running around Marsh Island. He at-
86 tempted to do that by having, eight, ten and twelve very heavy mats, some of them ranging twelve courses, and some of them ten or twelve feet. He used those mats, or he attempted to use them. I think that one mat got away and floated up river, and another mat slewed, or in other words, went out of line six, eight or ten feet;—this is approximately only,—The mats, as I say, were mats that were very heavy. A few days after that Mr. Cooper came up to my dredge, and gave me instructions to go to Marsh Island and dig him some mud and Marsh grass, to be placed on the upper side of Marsh island closing dam; I do not remember for what purpose, but I know he gave me instructions to take my dredge to the edge of Marsh island, on this side of the island, and dig him some marsh mud and marsh grass, He told me if I could not get mud on the edge of the island, to go into the island until I did get it, as he must have it. Those were my instructions, and in pursuance of them the dredge was taken to the edge of Marsh island, and after I dug up one dipperful, I found that there was sand there, and I had to turn the dredge square onto the island, and I dug in seventy-five feet, or perhaps not that much,—maybe a little more. Mr. Cooper came up while I was in the island, digging the mud, and to
87 use his own language, he said, "That is the very stuff I want." He then told me to take the dredge back and put it on the work again. I heard nothing about it any more until Capt. Carter's return,—he was away at the time,—when I received a letter from him; it might have been ten days afterwards, maybe longer than that,—relieving me and placing Capt. Cunard in my place. Capt. Cunard came down and told me there was a letter in the office for me, and I had better go up and see about it. I came up to the office and Mr. Sterly handed me the letter, or read it to me, and I did not understand it at all; I went in and saw Capt. Carter and asked him what it was about. I said,—"What does it mean? I don't understand it." He said, "There are very grave charges against you." I said, "I am at the first of it, Capt. Carter, I don't know what it means." And he told

me that I was charged with disobedience of orders in digging in Marsh island without instructions, or something to that effect. That was the gist of the charges for disobedience of orders. I was very indignant; I had been discharged, and I suppose I lost my temper and told Capt. Carter that Mr. Cooper lied, and I don't take that back yet. Gentlemen, he did lie. Capt. Carter became indignant and reproved me
88 for stating that Mr. Cooper had lied. I then demanded, or asked Capt. Carter for an investigation, and told him I thought I was entitled to it or something to that effect. Finally he said that he would have Mr. Cooper in the office the following morning. Mr. Cooper did not come; I guess he knew better and did not want to come, and Capt. Carter said that Mr. Cooper was so busy down the river that he could not get off. Capt. Carter placed me back on the work without any investigation whatever. He simply told me to meet him on the Angler, and he carried me to No. 1 dredge. Mr. Mays was the inspector of that dredge. That is all I can say in regard to that matter, as I remember the circumstances now.

Captain Carter:—Mr. Cooper explained to me that he thought he had made a mistake, and I put Mr. Twiggs back on the work.

MR. GIESLER, called by Capt. Gillette, testified as follows:—

Q Will you give me an estimate of the cost of building a mattress according to each of the three designs in the specifications, and according to the eight courses combined,—such as are put in the Savannah harbor?

A I have made such an estimate at your direction and
89 I have it in my hand now. The cost of building an eight course mat, such as are put in the harbor, I estimate at $382.40; and I estimate making a mat of the same superficial area, according to the first design, at $347.87.

Q (By Col. Gillespie): That is one layer?

A The eight course mattress consists of eight layer; the second estimate is for one layer.

Q Then the full mat will be eight times that?

A Yes sir; with the exception of some items;—for in-

stance,—the item of towing, which is quite a considerable item. A mattress built according to the second design I estimate would cost $201.81.

Q For a single mattress?

A Yes sir, according to the specifications.

Q You estimate the first design at $348.00 in round numbers for a single course mattress,—the second design, single course, $202.00;—the third design $187.00, but you estimate that the eight course mat as put in, cost $382.00—

(The Commission is questioning the witness from a paper, said to have been made by him)

No answer.

Q (By Major Adams) What was the contractor's price?

A (Capt Gillette) $1.10 per square yard at Cumber-
90 land Sound; the cost is about $3,600.

Q (Major Adams) Have you figured out the price as paid for one eight course mat?

A About $3,600.

Q What would the Government have to pay for the first design built according to specifications?

A About $450.00.

Q For a complete eight course mattress?

A No sir.

Q Would it have to be multiplied by eight?

A Yes sir.

Q (Capt. Gillette) Are you familiar with the state of the breakwater out there?

A Yes sir; I have been out there and made a survey out there.

Q Do you know the date upon which the estimate for the original breakwater was made?—do you know the survey on which it was made?

A I think it was made in 1895.

Q That is the survey upon which the estimates were based?

A Yes sir.

Q Has there been any survey made since then?

91 A None; with the exception of one Mr. Cooper made in last February.

Q Between those two dates was any survey or examination made by any one connected with the office, as far as you know?

A No sir.

Q Were there any soundings taken by any one connected with the office, as far as you know?

A No sir; only those soundings that were taken by Mr. Cooper.

Q Between those two dates—I have mentioned?

A No; there was no examination that I know of.

Q Could any examination have been made without your knowledge?

A I don't think so.

Q Have you investigated the matter of cutting off Hutchison island?

A I have at your direction, seen a number of those who own the property.

Q You made this drawing which I now show you in connection therewith?

A Yes sir.

Q This shows the property and the ownership?

92 A That was the best I could get; it is not absolutely correct, but it is not very far from the truth.

Q Did anybody demand any excessive rents during the existence of the contract of 1892, known as the "big contract?"

A No sir. The only people that I have not seen in connection with that are E. A. Smith and the Kinzie heirs. The Kinzie estate—and in regard to that I saw somebody who knew about it, and I am really only in doubt in my mind about E. A. Smith.

Q With the possible exception then of E. A. Smith, nobody demanded an excessive rent?

A I don't say that exactly. I believe that the owners of the ship yard at one time demanded quite a considerable rent. The question that was given me to investigate was whether any body had bought any land with a view to demanding such excessive rent.

Q Did you find anything to indicate that?

A I found nothing to indicate that.

Q (By Major Raymond) About that Savannah harbor breakwater,—were two sets of soundings made there?

A Those two sets are right before you now.

Q Were the soundings made by the wharf surveyor or any engineering officer there and recorded in the office,

93 taken at any time previous to that?

A I can only answer that in one way;—with the ex-

ception of those before you, there is nothing in the office that I know of.

Q There might have been a coast survey map?

A Yes sir; there was undoubtedly a coast survey map.

Q So that Capt. Carter speaking of new soundings, might refer to the more recent set of soundings?

A On the part of the coast survey?

Q He might have referred to those as new soundings; he may have drawn his opinion from them?

A Undoubtedly there were some coast survey soundings; but when they were made I don't know.

(Major Adams) I want to find out whether the reference to new soundings might not refer to something besides soundings made by this office.

(Capt. Gillette) I can only find what you have here, and nothing else to base such a statement on.

Q (Capt. Carter) Do you recollect the failure to cut off a portion of Hutchison island training wall?—do you know what investigation was made by me concerning the resistance I would encounter in cutting that off, if I had tried to do so?

94 A I know nothing more about it beyond what I recently read in a certain letter referring to the subject.

Q I did not talk it over with you afterwards?

A No sir; you have never spoken to me about the matter.

Q Only from an engineering point of view?

A Yes sir; not from the other points at all.

A. G. HANCOCK called by Capt. Carter:

Q In reference to your proposed bid for the work here, the question has come up that I did not give you any information about the work when you came to me?

A That was a mistake; on the contrary, I got plans and specifications, and I got information, but it seemed to me that the information was peculiar: I never said that I did not get any information.

Q Did you not come to get plans and specifications for the work, and did I not go over them with you, and when you asked me about the work, did I not give you all the information I could, and tell you it would take a lot of money, and

you should look into the matter thoroughly, and that you should go down to Cumberland Sound and look over the proposed work?

95 A The chief thing I remember you told me was that the plant would cost $400,000.00.

Q Tell us exactly what I said?

A I certainly understood you to say that the plant would cost $400,000, but I expected to bid for the work for my own cencern—

Major Raymond:—What was your own concern?

A McAlpin & Schley. We made an alliance with people up the country, and we expected to bid for the work. I came up to Capt. Carter to apply for the papers, and my recollection is that he gave me one copy of the papers, and told me he would furnish me with the other part after I had looked over the ground. Then he went on talking to me about the character of the work, its difficulties, telling me how hard it was, and asking me to go down there and look at the work myself. I think he told me that he warned people not to bid unadvisedly; that is my idea, but I am quite clear about that $400,000.00 plant. I have always felt that that was a very high price for the plant for that work.

Q (By Col. Gillespie) What effect did this have upon you?

A I don't know that; I can't say, but I didn't like it.

Q You didn't like it?

96 A I didn't like the statement as to the plant costing $400,000.00.

Q Might you not have mistaken Capt. Carter as to the amount?

A I had quite a long interview with Capt. Carter, and I discussed it with my principals when I went back to them. I am clear that there was not any mistake about those figures, because I went right back to them and talked about the interview. Naturally I was careful to listen to what he said, because it was my business to do so. We immediately investigated the matter of the cost of the plant, and could not see where it was at all necessary to spend that much money on the plant; so that I think if there was any mistake about it, that mistake was not mine.

Q (By Major Adams) You estimated the cost of the plant necessary to carry on the work?

A I think my people did figure it out; that was gone into by my people; it was done apart from me.

Q What was that estimate?

A As to the plant, I never heard them say. We made our estimate on the basis of rents and charter of plant, not on buying it.

97 Q (By Capt. Gillette) Do you know what was the value of the plant the contractors are actually using at Cumberland sound?

A Not a thing, sir.

Capt. Carter:—I remember very distinctly the interview with Mr. Hancock. I think he must be mistaken about the value of the plant. I think I can refresh his memory as to exactly what was said. I think it was in discussing the plant that I told you it was quite possible—we talked quite a good deal about a good many things, and I wanted to give you all the information I could, as it was a new experience with you. I did not want any man to go down there and make a failure, for his own sake and my own. I do not remember the statement about the cost being $400,000.00. I remember I talked to him and may have said to him that to carry on this work would take a large amount of money, perhaps $300,000.00 or $400,000. or perhaps up to a million dollars. There was no money appropriated at that time except $5.000. and he might have to borrow money for a year so as to go ahead with the work, and I may have said to him that he might have to incur an expense running from $300,000. or $400,000. up to a million: I remember using the word "million." I may have said to him that it would require an enormous

98 amount of money, beyond the plant, to do that work.

Q (By Col. Gillespie) Do you remember what Capt. Carter says?

A I remember the discussion of the difficulties of the work at Cumberland sound. I know we discussed it, but it is pretty hard to recall the exact words in which everything was said; but what fortifies me in the idea that I am right is that I went and immediately discussed it with my principles.

Q You never did any work requiring such a plant?

A No sir.

Q At that time you were not familiar with the material and plant required to carry on that work?

A Only in a general way.

Q (By Major Adams: Did you put in any bid for the work?

A No sir.

A Why not?

A Our preparations for bidding began very close to the time the bids should be put in, and we did not feel that we were in a position to put it in with such little preparation as we had to get up figures. If we had had a few days longer we might have done it. My recollection is that the people associated with us only came here three or four
99 days before the letting of the work, and they were unfamiliar with that kind of work. The reason we entered into the business at all was because they knew I had a lot of experience down on the seaboard, and was familiar with the local conditions. We did not have time to go into the matter fully,—we did not have time to get ready and we felt that it was not a good business proposition for us to bid.

Q (By Major Raymond) Who were the people whom you represented?

A Venable Bros., who are now constructing the work at Tybee.

Afternoon Session:—

Present;—

Members of the commission,
Capt. Gillette,
Capt. Carter
and the stenographer.

A. S. COOPER recalled by Capt. Carter.

Q (By Capt. Carter) You said that Mr. Hancock told you that he had been unable to get certain information?

A Yes sir.

Q When did he tell you that?

100 A About a month ago.

Q Can't you state when a little more definitely than that?

A No sir; I can't. It was at Tybee; I think it was about a month ago; it was not over a month ago.

E. R. CONANT called by Capt. Gillette, testified as follows:—

Q Have you been employed as inspector of government work by Capt. Carter in this district?
A Yes sir.
Q Where were the works you were employed on?
A The first work was a small contract at Jekyl creek.
Q What was the next?
A The next was at Augusta.
Q What was the next?
A The next was inspector on the dredge work in the Savannah harbor; the next at Augusta, Ga; the next dredge work on Savannah harbor; the next was at Fernandina, Fla.
Q When you went to Augusta, Ga., who was the contractor having the contract?
A A. J. Twiggs.
Q Were you given instructions by Capt. Carter as to
101 carrying out the specifications?
A Yes sir.
Q Are there fascines prescribed in those specifications?
A Yes sir.
Q Did you built them according to specifications?
A Yes sir.
Q What were your general instructions as to carrying out the specifications?
A I was given instructions to carry out the specifications in the work, that they should be carefully carried out, that it was a work of importance, that the previous work that had been done on the harbor in Savannah river had not held up after a heavy freshet, and that the present contract was desired to be carried out in such a manner as to have the work stand any freshet, and to built it in the best possible manner consistent with the specifications.
Q Did you do that?
A Yes sir.
Q Did the contractor object?
A The contractor did object to carrying out a certain part of the work.
Q Was the contractor there considered a capable and
102 an honest man?
A I do not consider that that contractor took hold of the work with the determination that he should have, and

with the right motive. I don't want to say that he was dishonest, but I don't think he took hold of it as any contractor should.

Q How did the work that he did compare with previous work done in the same vicinity by other contractors?

A Most of the work that had been previously done was more or less damaged, so that I could see only a part of it.

Q How did the part you saw compare with the work you would call the attention of the contractor to?

A I think that the work that I left was done better than a part of the work I saw.

Q Did you see any fascines on the work?

A The fascines were badly made, but I could see some portions of brush of what had been fascines, but there was nothing to show their form; it was simply brush.

Q Were there no remnants of the ties?

A There was nothing of the ties left.

Q What material did you use for the bands, for tying the fascines together with?

A Both wire and rope.

103 Q (By Col. Gillespie) How long a time previously had the first work been done?

A Some work had been done before I came to this department; I think two or three years, but it was previous to my coming here, I know.

Q (By Capt. Gillette) One contract is dated August 1891, and this was opened June 19, 1893. There was little or nothing left?

A Of brush.

Q How about the stone?

A The stone was there.

Q Was the stone placed in the shape that you placed the stone under your contract,—the contract you were inspector of? In placing the stone did you have the contractor place the stone by hand, or throw it in rip rap?

A On the top of the jetty the stone was edged up and on the shore protection, but on the mattresses it was just thrown on.

Q Did you see any stone that any of the preceding contractors had placed in either of those positions?

A There was some of the shore protection remaining that indicated that it was placed by hand.

Q Would you in your judgment say that there was
104 anything like as much placed by hand under previous contractors as there was under this contractor?

A There was very little work of the shore protection done previous to this.

Q How about fastening the fascines to the bank for shore protection, how did you fasten them?

A We fastened each fascine by driving stakes through them into the ground.

Q How did you drive them?

A We drove them until the head broke under the hammer, two or four feet.

Q Did you ever have the head break more than once in driving them?

A No sir; we never required them to be re-headed.

Q Did the contractor complain of the difficulty of driving the stakes?

A Yes sir; he did.

Q Frequently?

A In my recollection, but once.

Q Did you tell him he would have to drive them down as prescribed if he had to use pile drivers?

A I don't remember telling him that. I told him if they could not be driven sufficiently well he would have to
105 employ a pile driver or other means.

Q What was the object of this shore work?

A To protect the banks; the river rises there to the mean height of perhaps five to seven feet, up to twenty-five feet sometimes.

Q Did you ever see a pile driver used in that kind of work?

A No sir.

Q Did you ever hear of anybody using a pile driver in that kind of work for driving stakes in fascines on the shore?

A I am not sure, but it is my impression that they employed a pile driver in protecting the bank of the canal, or a part of it.

Q You afterwards went to Fernandina, Fla., as inspector on mattress work?

A Yes sir.

Q Were the specifications for the fascines there similar or different?

A They were the same except as to the length of the fascines.

Q Did you carry out the specifications at Fernandina the same as you had at Augusta?

106 A In regard to the construction of the fascines there they could not be carried out in the same way. The brush at Fernandina, Fla., is entirely different from the brush we had at August.

Q Did you put in as much material for the same length of fascine at Fernandina as you did at Augusta?

A I don't think there was.

Q Did you put in half as much?

A Yes sir.

Q Did you put in half as much wood material, not leaves?

A Yes sir; more than half.

Q What percent would you say?

A I should think at least sixty per cent more; that would be the very lowest; I will say sixty percent or seventy.

Q Were chokers used in choking the fascines as at Augusta?

A Yes sir.

Q What kind of choker was used?

A The choker was mostly a chain, I think, three or four feet long, and at each end was left a ring: this chain was taken around the fascine, and two men, one each side
107 of this bundle, put a long stake into each end and through the ring and by using this leverage, they tightened the brush, after which it was tied with wire or rope, whichever was used.

Q Did you supervise personally the construction of the fascines?—did you see them built?

A I saw some built, but I was not supposed to be inspector during their construction. I saw them when they came on to the work.

Q You saw the fascines?

A Yes sir; that was all. I measured the cubic yards.

Q At Fernandina, did you see the fascines built?

A I saw some of them; I visited the camp occasionally, and saw the material to make them,—the business of making them. The business of the inspector there was along the wharf where the mattress was constructed on the ground, after the fascines were hauled from the woods to the work.

A They were under your eye during the construction of the mattress?

A Yes sir.

Q What year was this?

A 1894.

Q What kind of machinery is used in choking the 108 present fascines?

A Pretty much the same, except that instead of chains, they use perhaps, inch and a half rope.

Q Was there any difference in your instructions at Fernandina from what your instructions had been at Augusta?

A The instructions were varied afterwards.

Q As to the interpretation of specifications, was there any material difference between your interpretation and that of Capt. Carter?

A As to the construction of the mattress?

Q As to carrying out the specifications; in one case you were told to carry out the specifications strictly, and you did so?

A Yes sir.

Q In the other case, were you told to carry out the specifications strictly?

A No sir.

Q What were you told?

A I was told to carry out the work and to construct the mattress in the same manner as they were constructed in the lower harbor work.

Q That was not the same as at Augusta?

A No sir.

109 Will you give me an estimate of the comparative contents of one hundred square yards of mattress built at Augusta and one hundred square yards built at Fernandina,—which cost the most, in Fernandina or Augusta?—Which work cost the most, at Fernandina, Fla., or Augusta, Ga?

A At Fernandina everything was favorable to the contractor; the brush was obtained within a radius of a mile to two miles and a half, and there was a shell street to haul it along which large loads could be hauled, and everything was favorable. At Augusta the brush was more easily obtained, but the hauling was longer. I should consider that at Fernandina the mattress could be constructed cheaper than at Augusta.

Q About how much more would it cost comparatively at Fernandina to built a mattress as they were built at Augusta?

A They would cost much more, for this reason, that at Fernandina the mattress was constructed four or six

course layers, while at Augusta they were always constructed there as a general rule, except on a few occasions, as single mattresses. There they were simply towed a very short distance, while at Fernandina they were con-
110 structed on shore and hauled about five miles to the place of sinking.

Q The cost to the contractor at Fernandina to put in say, one thousand yards of mattress, as it was put in a good many times, would be as much as it would cost him to put in a mattress that was originally built in single course in that work at Augusta?

A To place it in the work in the same way?

Q Say one mattress at a time?

A It would cost him—that would depend—one thousand square yards—that would depend upon how many courses could be put into the mattress at the same time.

Q Take an eight course mat?

A It would cost many more times—a four course mat would cost him four times as much as a single course.

Q About how much more would it cost to put in a mattress after the Augusta plan; give me figures of one, two three or four course?

A It would be very difficult for me to answer that question.

Q I understood your answer before was many times; could you say how many times?

A I could not say how many, but it would cost a
111 great deal more to use a single mattress than to lump up three or four courses and sink them—at once.

Q (By Col. Gillespie) Was there the same contractor on the Fernandina work as there was on the Augusta work?

A Bangs was the contractor for Fernandina and on Cumberland sound.

Q (By Capt. Gillette) What was the final result of the work at Augusta?

A The work progressed very slowly, and about the time it should have been completed, there was one half or prehaps, less than one half of the work done, and the work was taken up by day labor, and we allowed the contractor to do what he could on his part, and we went to work and finished it up in a very short time.

Q Do you know anything about the financial standing of the contractor when he got through with it finally?

A About the same as when he started. He had very little

when he started, and when he got through he had very little or much less.

Q (By Capt. Carter) Had you any experience in work of this character before you came into my district?

112 A No sir.

Q You were asked to compare the work at Augusta with the work that had been done previously,—did you see any of the work that had been done previously which you were asked to compare with the work such as had been done when you were here?

A At Augusta,?—no sir; the previous work was done before I came into your employ.

A They have pretty good floods there, don't they?

A Yes sir; twenty-five feet rise.

Q Did you see the freshet there, where the dam on the Georgia side was carried over to the South Carolina side and vice versa?

A Yes sir; I saw the effect of that flood.

Q Is it possible to form any estimate of what was done after one of those floods?

A No sir; everything was torn away by the flood; it cut away ten or fifteen feet of bank.

Q How frequently do those floods come?

A I could not answer that. I think in 1882—I would not be able to answer that,—I have not been in the district long enough to answer that.

113 Q You were asked whether the stone was placed on the work by hand under the previous contractor,—is it practicable in work of that character to place the stone by hand when the mattress is sunk underneath the water?

A It could not be placed by hand.

Q You were asked about the difference in the character of the work near Augusta and on the coast, and the possibility of making an accurate estimate of the work in the two localities; are they now entirely different, depending upon the character of the material?

A Yes sir.

Q Can you carry out anything as close on the ocean bar as you can on the river bank?

A No sir.

Q What is the object of a mattress on the ocean bar as you understand it, from an engineering point of view?

A Take the formation of the jetty at Cumberland sound,

for instance—, it was proper to have a mattress to stand where it would form and make a sand bank.

Q Is it possible to do that sort of thing to bank protections in a river?

A Not in the case that I was on.

Q Not only is it not possible, but would not a man
114 be a fool that would try to do it?

A It could not be done, sir.

Q You were asked to compare the cost to the contractor of a mattress as built at Augusta and the cost here, and if they were built alike, would not the brush have to be brought all the way from up the country?

A I don't know much about that; I am not familiar enough with the country to answer that.

Q You are familiar enough with the case to know that it would cost more if it had to be brought a long distance by rail than what it would if built on shore?

A Yes sir.

Q Have you seen any brush similar to that on the bank of the river at Augusta, round here?

A No sir; that brush made perfect military fascines.

Q Do you consider yourself an expert in determining the cost of the mattress work to the contractor?

A Well,—O don't say that I am an expert; but I think I could form a good idea of the cost of a mattress to the contractor. I think I am capable of forming an estimate of the cost of a mattress to the contractor. Of course, the cost of
cutting the brush and formation of the fascines, towing
115 the fascines to the place where the work is, and the cost of the stone have got to be estimated.

Q Is that all?

A No sir; there is the sinking of the mattress.

Q Is that all that enters into it?

A I don't think of any other details now.

Q Was it not customary always to recommend in the district that the accuracy with which the work was done was dependent largely upon the exposure of the place; in other words,—there was no attempt to put steam steering gear on a mud scow;—would it be fair or sensible to exact the same conditions every where, where the conditions were entirely different?

A No sir; local conditions would, of course, enter into it.

Q Of course, you would know you were carrying out those conditions as far as I wanted them carried out?

A Yes sir.
Q Did you ever have a personal difficulty with Twiggs?
A I did.
Q Did Twiggs feel disgruntled at the method of carrying on the work?
116 A Yes sir, and I made a report to you from time to time, and received instructions.
Q (By Capt. Gillette) What was this personal difficulty?
A After his failure to complete the contract, I was given orders to get some plant together and go ahead with the work that was then being done by the contractor, and I think I got on so much better with it than he had, that he was jealous of the way it was progressing. It so happened that he had a little tug to tow the material, and when I wanted my material towed there was always some excuse made; he wanted to have his material towed. I can't go into it fully. My idea was to finish it as quickly as I possibly could. On several occasions we had little tilts, and one evening I told him he had not kept his word, and that brought on that trouble.
Q What was the trouble?
A Without what I considered any provcation, he struck me; I came away and reported it to my employer, Capt. Carter; then went to my hotel. I understood that all that evening he kept a very close watch on my whereabouts, but I was right in my room.

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117 MR. GIESLER recalled:—

Here is a further memorandum in regard to the cost of the mattresses, which was requested by the board this morning.
Q (By Major Adams) Did you have anything to do with making the specifications of this work?
A Nothing at all.

Capt. Gillette here read the affidavit of Mr. Marion Twiggs who is at present ill at the Savannah hospital and unable to attending the meetings of the board.

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118 R. V. WOOLVIN, called by Capt. Gillette, testified as follows:

Q (By Capt. Gillette) Have you been inspector of mattresses at Augusta?

A I was assisting Mr. Conant there for a while.

Q Who was the contractor?

A A. J. Twiggs.

Q Have you seen the mattresses constructed at Savannah Harbor?

A I have seen the mattresses constructed in 1892 and 1893; some of them were thirty feet wide.

Q Have you ever seen any of the remains of the work constructed prior to Mr. Twiggs' work, about two years previous to that?

A I saw some of the last work done there on the Savannah river above Augusta. When I was in Augusta, I went and looked at it.

Q The old original work?

A Yes sir; I seen some of that work that was done by Green & Gaynor.

How does that work compare with that done by contractor Twiggs?

119 A He did better work, Twiggs' was the best work.

Q What was the difference there in the work?

A The stone was better placed by Twiggs, and the fascines were trimmed better. From what I could see of the other work it was a kind of loose brush fascines.

Q Something similar to the brush fascines seen on the river?

A Something similar; probably not so large as they

A Did you see any stone that was placed on the shore protection of the old work?

A Of the former work?

A Yes sir.

A Yes sir.

Q Was it placed by hand or loose?

A It looked as it is was thrown even; some was not so even.

Q How about the stone that was placed under the new contract,—how was that placed on the shore protection?

A Under the Twiggs' contract that was placed by hand,

on the grade it was placed edge-ways, and on the flat surfact it was placed flat.

Q That was the Twiggs' contract?

A Yes sir.

120 Q Was there any of this edgewise placing of the stone under the previous contract?

A I never saw any.

Q Did Twiggs place the stone better in any other place?

A Yes sir; he placed it on the top of the dam better; he placed it by hand there.

Q Did you see any of that sort of work that had been done by the previous contractor?

A I did not.

Q Did you see any driving of stakes to hold the fascines on the shore?

A On the Twiggs' contract; yes sir; I had some driven.

Q What were your instructions about driving them?

A As well as I remember the stakes should be three inches in diameter and five feet long.

Q And driven how far?

A Driven up.

Q Did you succeed in doing that?

No sir; the bank was too hard in places, it could not be done.

Q You always drove them as far as the stakes would
121 hold, and thought probably then the fascines would stand?

A I don't know about that. They were driven down with wooden mauls until the head burst.

Q If you had been trying to protect the bank with stakes and fascines for yourself, would you have driven the stakes that far?

A Yes sir; I think I would.

Capt. Carter,—Did you see any of that prior work, or could you compare the remains after the freshet when it was washed away?

A I never saw any of that prior work.

Q You were working in connection with Twiggs contract after the freshet?

A Yes sir.

Q (By Captain Gillette) Were the bundles of brush in place?

A Yes sir; they were in place, and some of the stakes were there.

Q Did the stakes appear to be thoroughly driven?
A I don't think they were thoroughly driven. I saw Mr. Twiggs take hold of one of them and pull it up with his hand. That was one of the causes of friction between him and Mr. Conant; I heard him remark about it several times.

122 S. M. HALE, called by Capt. Carter, testified as follows:

Q Have you been inspector of brush mattresses in this district?
A Only at one time; that was at Augusta.
Q Who was the contractor?
A Twiggs, Albert Twiggs.
Q You read the specifications?
A Yes sir.
Q Did you have any instructions as to how to carry them out?
A Yes sir.
Q What were they?
A I was on the shore protection. The fascines were to be well made and tied tight with wire, two feet apart, placed in the proper place and driven down with stakes.
Q Were the fascines thoroughly constructed?
A Yes sir.
Q Strictly according to specifications?
A Yes sir.
Q What kind of stakes were used to fasten them down?
A Stakes from three to four inches in diameter.
123 Q State what process was pursued in driving the stakes?
A The stakes were driven two or three feet deep, or as deep as we could get them; the clay was very hard and we could not drive them any deeper.
Q Did you drive them right down and then stop?
A We had to cut them off and drive them again.
Q How many times do you know of cutting off the stakes and driving them down?
A Twice.
Q That makes three drivings?
A Yes sir.
Q With heavy mauls or light mauls?
A With heavy mauls.

Q Did you see any stakes driven under the previous contract in the same vicinity?

A No sir.

Q Have you seen the brush mattresses built on the lower river, on the seacoast of this district?

A I have never been over one.

Q You were not familiar with them?

A No sir.

Q Have you seen the bundles of brush used in them?

124 A Yes sir.

Q How did they compare with the bundles of brush used at Augusta?

A The fascines at Augusta were much clearer of twigs and leaves than these were.

Q Was the best brush grown as far as you know, here or at Augusta?

A It was better at Augusta.

Q How much better?

A According to the brush I saw at the camps, it is much better, sir.

Q Did you find the contractor, when you were sent to his camp with a lot of brush ready for use?

A Yes sir.

Q How many bundles of brush did it take to make one fascine, same length of bundles?

A Three or four he told me.

Q How were these fascines made, how long?

A They were one hundred feet long.

Q Were the limbs cut off?

A Yes sir, he trimmed them off.

Q What about the material in that stock of bundles that was there when you got there, was there any thrown away, do you suppose in making fascines of it?

125 A I could not say; the only way I can get at it is that the bookeeper told me he built two mattresses, 100 by 50, and it took ten thousand bundles, ten thousand he had on hand.

Q Did you find any bundles that you could not make anything out of at all?

A Yes sir, some we did not use.

Q (By Capt. Carter) In making those fascines, did you receive any instructions as to how the fascines should be made, the new ones?

A Yes sir.

Q Were you not informed that fascines in order to come up to the specifications should come up to the fascines which were shown you as a type?

A Yes sir, I was to carry out the specifications.

Q As interpreted by Capt. Gillette?

A Yes sir.

Q Who instructed you as to what to throw away and what to put in?

A No one.

Q How were you told to build that fascine?

A With few leaves or twigs; Mr. Cooper told me to make them about the same as we built them in Augusta.

126 Q (By Major Raymond) It was not the same kind of brush, was it?

A The specifications say "very few twigs and leaves" and I built them that way.

Q (By Captain Gillette) What instructions did you get from me in regard to building those fascines?

A All you told me in the office was to see that they were built well, tightened and made out of good brush, and I spoke to Mr. Cooper about it, and he gave me a copy of the specifications, and told me to carry those out.

Q Then the gist of the instructions was to carry out the specifications?

A Yes sir.

Q (By Capt. Carter) Did not Mr. Cooper tell you to leave the brush similar to that in Augusta?

A Yes sir.

Q (By Capt. Gillette) You were only that winter in Augusta?

A Yes sir, I was only that winter in Augusta.

Q (By Major Raymond) Do you know the brush in Augusta and you know the brush down here?

A Yes sir.

Q Taking equal quantities of that brush, would you not have to take a great deal more to make a fascine down

127 here out of that brush than you would out of the brush in Augusta?

A The time we were in Augusta it was winter, and there was not any leaves on the brush; it was mostly composed of sweet gum; down here there is nothing but oak and myrtle, and it was full of leaves.

Q It would take a great deal more brush down here than it would up there?

A Yes sir, you would have to use a great deal more.
Q Did Mr. Cooper, tell you to leave out all the twigs and leaves?
A That is the reason I mentioned about Augusta. He said he wanted the specifications carried out.
Q You got your interpretation from him as to what was wanted?
A Yes sir.
Q Did Mr. Cooper pretend to interpret the specifications for you?
A He read the three designs over to me, and told me that no further instructions were necessary.
Q And he gave you no further instructions?
A No further instructions.
128 Q (By Capt. Carter) You said he told you to make them like those were made in Augusta?
A I thought he meant that, and I asked him if I should make them like those and he said yes.
Q (By Capt. Gillette) When you left my office, all the instructions you had were simply to go over there and have the mattresses built according to specifications?
A Yes sir.
Q How did you built those mattresses any different than you would have built them if you had gone straight from here to the mattress camp?
A No sir, I followed the specifications.
Q (By Major Adams) Why did you ask Mr. Cooper?
A That was before I got the specifications.
Q Did he not give you the specifications and point to whatever he explained to you?
A Yes sir.
Q (By Captain Gillette) Did you think the same from reading them yourself?
A Yes sir, I thought the same from reading them. I built them according to the specifications. There were very few leaves in the Twiggs' fascines.
129 Q Is that the way you would have built them had you received no instructions except to carry out the specifications?
A Yes sir.
Q (By Capt. Carter) Had your work not been altogether confined to Augusta, where you built them in the winter season?
A Yes sir.

130 AUSTIN, called by Capt. Gillette:

Q (By Capt. Gillette) You have been inspector of the construction of mattresses in this district?
A Yes sir.
Q In what year?
A In 1893.
Q Were you given a copy of the specifications?
A Yes sir.
Q Were the fascines composing the mattresses built according to the specifications, according to any of the three designs mentioned in the specifications?
A At the time that I was on the work in the Savannah river, the contract of 1892 had just started, and the mattresses we were then building were mattresses to be used alongside of the training walls, as I understood it at that time, to prevent scouring. I don't recollect whether they were constructed according to any of the designs in the specifications or not, but they were constructed as I was ordered by my superior officer. I was under Mr. Ensey, Mr. Twiggs and Mr. Hall, at various times.

Q Were the fascines built under your supervision, or
131 were they brought there ready prepared?

A They were brought there ready prepared.
Q Was the brush trimmed at all?
A Some of the bundles might have been trimmed and some not.
Q Have you ever seen a fascine built as prescribed in those specifications?
A Just at present I cannot recall the specifications; I have not read them since the contract of 1893. I have built fascines or have seen them built under my supervision.
Q For the mattresses prescribed?
A For use on the work in this district.
Q Were they chocked?
A They were choked.
Q Tightly choked?
A Yes sir.
Q Where were those built?
A Above Augusta.
Q What contract was that, who was the contractor?
A William H. Walsh.

Q What year was that?
A That was in 1892, the latter part of 1892.
Q What were those fascines used for there?
132 A In the construction of jetties.
Q Was the brush trimmed?
A Well, it was, yes, the brush was trimmed in this way, that when there was a large limb of any kind, projecting limb, that was looped off and made use of as if it was a separate limb; sometimes they were rather large, in fact, almost trees cut down.
Q Did you build any shore protection there?
A No sir. The country up there is all rocky, in fact, the whole river above Augusta is quite different to what it is here.
Q How is the brush up there compared with what it is down there, have they any difficulty in getting brush?
A There was no difficulty in getting good brush there; there was any quantity of it on the river bank.
Q How about down here?
A I don't know.
Q How did the brush look, did it look as good brush as you got there, did it look as straight and as good brush?
A I don't think it was as straight, I know it was not as good brush as we used on the work up there. We had plenty of it to select from and we had more variety to select
133 from; the brush here is not as straight as it is up there.
Q (By Capt. Carter) You were inspector down the river at one time?
A Yes sir.
Q Do you remember what the size of the fascines called for by the specifications was?
A I remember that they were nine inches choked; that is part of the specifications that I do remember.
Q Do you happen to recollect whether you examined any of those fascines or many of them as to their size?
A I did examine some of them.
Q Were they according to the specifications?
A Some of them measured nine inches round and some of them went as high as a foot and a half.
Q Did not the majority of them run far above nine inches that you measured?
Q Yes sir. I don't think I measured any one bundle of brush that was less than nine inches and a good many meas-

ured a foot and a half, not one or two but probably four or five dozen in a barge row.

Q The average in a barge row would be thirteen or fourteen inches?

134 A I would put it at thirteen or fourteen inches, probably fifteen; very few of them are nine inches and I don't remember measuring any less than that.

Q (By Capt. Gillette) When you inspected those fascines were the bands under considerable strain from the pressure of the brush or not; was there considerable strain from the pressure of the brush or not?

A The fascines here or above Augusta?

Q Here?

A I don(t think they were choked as tightly here as above Augusta; the bands could not be slipped about, the brush had evidently been choked and I don't believe that any two or three men could have tightened the bands, unless it was choken by some method, what method it was I don't know.

Q You were not in the mattress camps?

A No sir.

Q Do you know whether there were any inspectors in the mattress camp?

A There was an inspector I think around there some where at the time they were made, at the time I was speaking of.

Q This was what year?

A This was in 1892. The mattresses at that time were

135 sunk as they were built.

Q (By Capt. Carter) Do you not know that every inspector on the work was instructed to look out for the interest of the United States first, and then when that was done, to permit the contractor to do the best he could for himself?

A I received those instructions.

Q Was not that the general feeling?

A So far as I know, with the inspectors connected with the work, it was the general feeling. I was on the work only a short time.

Q Do you think any inspector would have done anything that looked like showing favor to a contractor, without being fearful of losing his position, in other words, was he not required to show no favors, except what he legitimately could, to contractors?

A That was my understanding, so far as I could understand while I was on the work.

Q You heard nothing at that time to the contrary?

A No sir.

Q You were on the lower training wall?

A I don't remember, I could point it out on the map.

136 (Capt. Gillette here read a letter from Daniels, formerly an inspector.)

Capt. Gillette announced that he had no further evidence to present at present.

Col. Gillespie,—Captain Carter, you can now outline your defense, and afterwards you can present your witnesses.

Capt. Carter,—The statement in the report of Capt. Gillette, of August 19, 1897, that he examined the brush mattresses and that it was not at all according to the specifications, and did not contain more than half the material needed to be equivalent to the specifications, is incorrect. The mattress was built according to the specifications strictly, with the following modifications; the specifications required that the fascines should be placed between two grillages of poles, a bottom and a top grillage, the mattresses as used in

137 Cumberland sound were modified slightly under this provision that the United States can vary slightly the designs, provided there is no material variation in the cost.

Col. Gillespie:—Suppose you quote from the specifications, giving the number of the specification where you quote that as authority.

Capt. Carter:—I presume I can make this statement clearer by beginning in chronological order and show the development of this work here and why we used those fascines and how they were used.

Col. Gillespie:—Any way you choose, but I would rather have you quote the specifications under which you acted.

Capt. Carter:—In 1884, when I came here as assistant to Capt. Bailey, who was Gen. Gilmore's assistant, we were putting in mattresses composed of logs, with layers of brush on top at times, and at times without. Prior to my coming here I had not seen any fascines used for the purpose of improving estuaries on sandy coasts, having seen only the military fascines built at West Point, and naturally those fascines did not appear to me to be the equal of the military fascines, but from the experience of an officer like Gen.

Gilmore, and from my own experience I learned that
138 even if it were practicable to build military fascines, under no circumstances should those fascines being built, the object being to have an entirely different fascine, the object here being that the fascine should act as a silt catch and make the river build its own bank. As the work progressed those fascines were constructed into mattresses and various forms were tried for putting them into mattresses, the usual form being to use a grillage of poles and on top of this grillage to place of layers of fascine, and then to top off that layer of fascine by placing another layer of poles tied down. The object of the poles being to hold the fascines in place until they could be put in the work, and also to hold the fascines up until they could collect sediment sufficient to consolidate the whole. This after awhile became entirely unsatisfactory. For the following reasons; in 1892 or about that time, when the continuing contract for the improvement of the Savannah river, Savannah harbor, which was based upon plans submitted by me to Gen. Gilmore and approved by him, was adopted, the method of construction which formerly had been brush or log mattresses, or fascines, was changed and pile training walls connecting the end of those dams were used to regulate the width of the river between the spur dams. In making my estimate of the cost
139 of this work, I got the linear feet of the pile work, the cubic yards of the brush fascines required for mattresses, and the cubic yards of the stone, as nearly as I could tell from the profiles of the points where the points of construction were to rest. Shortly after that work began, by the construction, as I remember of the pile training walls in filling them in the brush fascines—

Col. Gillespie:—What year was that?

Capt. Carter:—I think that was in the fall of 1892—very shortly a tremendous scour developed along the face of the training walls, and it became necessary to stop that scour. I had not contemplated in the beginning building any mattresses along the face of those training walls. We then started to use one of those forms of mattresses along the face of the training wall, but the grillages resting on the bottom, the scour underneath, threatened to undermine the mattress, and then I had to devise a different method of putting down that mattress, and I had ordered the inspector to form a mattress, leaving out both the grillages, and weaving those fascines all together into mattresses with wire,

somewhat on the plan of the fascines used in the mattresses on the Mississippi or Missouri rivers. The contractor demurred to that, because it was cheaper to build
140 the mattresses as before than it was to do this work, but I reasoned with him and finally persuaded him to go ahead with the work, telling him that if we found after a while that it was a greater expense, I would recommend an increased amount of money being paid to him, but I thought that he would find that he would be able to do it at practically the same cost. After some demurring he proceeded to build the brush mattresses in that manner. Silting took place immediately on all of the faces of those training walls, and the danger of scour in my opinion was lessened with those mattresses. A little bit later, when it came to the constructing of the training wall on the lower flats, I think that is where it began, those fascines having worked so well along the face of that wall, I began using some mattresses in there. That was a failure, on account of the great depth of the water, and I had to abandon that method. I then told them that we would try the strict form which was given in the specifications, a grillage under the fascines and a grillage on top. I started to do that, but I could not do anything with that form of mattress by reason of the depth of the water and the pressure of the current, so I had gins rigged out on the barges, and tried to built them two or three courses
141 at a time. He complained, they were very heavy mattresses, because the swell of the passing steamers broke things loose, but I insisted on his going ahead. That work was carried on for some time, but after I had spent seventy thousand dollars (about), and saw how little increase there was in the height, it scared me very much, because I estimated that probably I could not complete it for three times that sum. Then it became a question how I could get those mattresses down there. When we put the stone on them with those heavy fascines, they would sink right into the bottom and we didn't get the height. Then I built them of several courses to avoid the intermediate courses of stone. He made objection to leaving out the stone, except the stone on top, because it necessitated a change in the plant, and because it was easier to build them according to the typical form of the specifications than in any other way, and in launching those large mattresses he would occasionally lose them, and they would get off the ranges. It made more difficulty for him, and the risk was greater, and he objected to

that. That refers only to the river work. Finally I succeeded, or the contractor at my suggestion, devised the way by which this work could be done.

I reported the matter, I dont know whether in writing
142 or orally, to the Chief Engineer, shortly afterwards. I remember the incident especially, because he sent me a letter introducing two French officers. That was the first time I had succeeded in getting this method in good working order. I was prouder of it than anything I have done on the river, because it enabled me to carry out this work within the appropriations, otherwise it never could have been done.

Q (By Col. Gillespie) Did you make any changes of which the Chief Engineer did not know?

A Those minor changes I did not report, no sir. I did not make any report of those, except as my Division Engineer was here, because the specifications gave me power to do this. It was never my custom to report those minor modifications to the department at all. When I succeeded in getting this up successfully, I was very proud of it and I reported it. The result of those modifications was very gratifying to me. Those gentlemen whom the Chief Engineer sent here, had seen a great deal of similar work, not only here, but also in Holland. They expressed themselves as not having seen anything as satisfactory, and as well calculated to do this work. Since the mattresses have been sunk in this way, the silt has formed, and the wall has filled up
143 in such a way as to consolidate, and the sinking which I had found previously, did not exist.

Q (By Major Adams) What date was this?

A That was in 1893. I think it was in 1893, the fall of 1893, as I remember. The first work here was in the fall of 1892. Then when we got down further, my estimate for this work had been stone, because I believed that the teredo would eat up this work, but the bottom was so soft that I found that I could not use stone at anything like my estimate of the cost, but to my pleasure I found that the shell growth, as reported by the Assistant Engineer, was so satisfactory, that the growth of barnacles covering the brush, protected it, and this enabled me to continue this light form of construction, and instead of stopping the brush work up the river, I carried it clear down to Tybee roads, watching it carefully and having him inform me if he saw any signs of deterioration, so that the plans could be changed. In this way the amount of brush mattresses was enormously increased, to probably four

times the amount of the original estimate. The amount of stone, for the same reason was decreased. The fascines were built as they had been built from the time I first came
on the work, and were built as required by the specifica-
144 tions. The specifications were made out by me, and were
intended to cover exactly the character of fascines which I got. The contractors, all of them who bid on this work, knew exactly the kind of fascines that I was in the habit of using; they knew exactly the kind of fascine I wanted.

Q (By Major Adams) Did you describe the fascine in the specifications?

A Yes sir; I described it. The fascines are described in Paragraph 39 of the specifications for Cumberland sound. There I say that the fascines shall be from thirty to one hundred feet in length. I modified that length, and required them to be built in shorter lengths, because I found that it was delaying the execution of the work, and it was impracticable to carry them as long as thirty feet, so I ordered them to be built about fifteen feet. They were to be choked tightly by an approved form of choker, either of chain or of rope, to a diameter of nine inches, but I could not get them down to a diameter of nine inches, and ordinarily they would run from twelve to eighteen inches, in diameter. They were choked satisfactorily. Any fascine on any work of
this kind, brought here after several days exposure to
145 the sun, may sometimes have the choker loose.

Major Adams: I understood that Capt. Carter was to outline his case, but he is making a statement of facts; it is not an outline, but it is a prolonged statement and assertion on his part.

Major Raymond:—I think Capt. Carter ought to be permitted to make his statement in his own way, at what length he likes.

Col. Gillespie: The chair rules that Capt. Carter give an outline of his case, without going into a description or detail, afterwards he can go into that, after he has called his witnesses.

Capt. Carter:—The outline is this; the work has been constructed according to the specifications as understood by me when I made them, and as understood by all the contractors when they bid on the work, and that no changes in the specifications have been made, except what were to the interest of the United States; that no changes of any description have

been made, except as were contemplated by the specifications and as were permitted by the specifications, and that no change has been prmitted which has varied materially the cost of construction; that the mattresses used here and at Cum-
146 berland sound were as contemplated in the specifications, and for the interest of the United States, not only were they as contemplated, but they were the proper kind of fascines for the work to be done. That the mattresses contained the amount of material required and contemplated by the specifications. That the system of payment by counting those eight layers as eight mattresses and paying for them by the square yard, was as contemplated by the bidders and by the specifications. As to the cost, the work was paid for at the contract price for mattresses per square yard; that the contractor could only make one trip instead of eight, was as contemplated by the specifications. That it was not put in the specifications was for the following reason,—that that method was patented by the Atlantic Construction Company, and to have put it in the specifications, would have given that company the monopoly. Everybody was told that if he could devise a system by which that could be done, he could do so. That was omitted in order that one company should not have any advantage over the rest of the bidders. If that had been put in the specifications, nobody but the Atlantic Construction Company could do it. That bidders were required to bid on three types of mattress at one price. That was done for the following reason; it was
147 contemplated, not only in the office, by myself, but also by every bidder; that the type of mattress which would be used was the third design, with perhaps a very few of the second, not enough to make any difference. The statement that the contractors have been paid more than they should have been paid, is an error; they have been paid exactly as ocntemplated by the specifications. The statement that the Atlantic Contracting Company has delivered so many yards of brush mattress, is probably true. The amount of money is probably correct. The mattresses have always been up to the requirements of the specifications, and instead of falling off, at the time I left, they were as good as they had ever been, as reported by the Assistant Engineer and as contemplated by the specifications.

The statement in here that the government has lost a certain sum of money is an error. The contractors have been paid exactly what was contemplated, and for work they put in,

according to the specifications. The statement that the government suffered any loss during this contract, is not true. The statement that I connived at it is a statement that is absolutely untrue. Everything that was done was for the interest of the United States in every particular. "That there
148 was no inspectors put on the brush camps except at short intervals." When I first came here inspectors were put on the brush camps, because the contractors were unfamiliar with the character of the work; when they became familiar with it and when the mattresses were built on the barges, we took the inspectors off. When there was any deficiency reported in the quality of the mattress, an inspector was sent to the camp to see that they were brought up to the specifications, and when the inspector reported that there was no longer necessity for inspection, he was recalled. Where the Atlantic Contracting Company have been the contractors the quantity of brush has invariably been larger than the estimate and the quantity of rock much smaller." That is probably true, because the nature of the work required it.

"At Cumberland sound the project estimated 425,000 square yards of brush and 425,000 cubic yards of rock." I presume that is correct.

Capt. Gillette:—I think that rock should be 425,000.

Capt. Carter:—In the estimate made by me and submitted to the Board of Engineers, the amount of brush was, as I remember it, reduced, on account of my fear that the teredo would eat the brush. In calling for bids, I called for what I thought would be required; but the mattresses down
149 there instead of, as I feared they would, sanding up very slowly, covered almost immediately, and I increased the amount of mattresses. The statement here that they put in a larger amount of brush and a smaller amount of rock is true. Whether the figures are correct, I dont know. That I made a statement to the Chief of Engineers, a statement in which the following statement occurs,—"In the specifications only 200,000 square yards of mattress are given, but as the new sounding shows that 300,000 square yards will be required, this estimate has been changed," is probably true; I have seen the letter. The statement that records dont show that any soundings have been made, may be also true, because there were many soundings made by me upon which I could base that statement that might not be in the shape of a formal survey. I have not had access either to my private

files, or to the public files, and I dont know upon what that is based.

Capt. Gillespie: You say that you have not access to your private files?

Capt. Carter: No sir.

Col. Gillespie: The files are at your disposal for any examination you desire to make.

Capt. Carter: I thank you. Whether that informa-
150 tion came came from an examination or from an official survey, I am not able to tell now.

Col. Gillespie:—Is that an outline of your case?

Capt. Carter:—Briefly it is that everything has been done according to the specifications, at the price given, for the interest of the United States, and properly.

Major Raymond:—You want to add that, "Without any personal interest."

Capt. Carter:—Of course, I was exceedingly anxious that the work should succeed.

Mayor Raymond:—Professionally?

Capt. Carter:—Personally, professionally and for the corps, certainly, that goes without saying. My only object in this work here was that I should carry it out and make a success of it, and I have done it. My interest was solely professional and for the corps. I was anxious to carry the work out within my estimate, and when I saw the danger of its not being done, I was scared nearly to death, and I devised every scheme to get through, and I finally solved the problem of carrying through the work, and the work is successfully done in the best possible manner. My interest has been purely and solely personal, professional and for the corps; nothing except that. I want to say this that there are
151 some of the dams (?) in here, that if I had to do them again, I would not put them exactly as it is. I have learned a good deal in thirteen years. If I could have foreseen what I know now, I would have called for the amounts in the specifications that were used in the work, but that I could not foresee.

152 A. F. ENSEY, called by Capt. Carter:—

Q Tou are a graduate of Johns Hopkins University?
A Yes sir.
Q Give, briefly, your engineering experience?
A I was engineer on the work at Baltimore, and since I left home I have been engaged on railroad work in Georgia, the construction of the Macon & Atlantic railroad, the Macon & Birmingham, the Georgia, Southern & Florida, on the F. C. & P. extension; on drainage work in Florida, and I am now engaged in locating a railroad from Jacksonville to Dead Man's Bay on the Gulf coast.
Q Between what dates were you employed here in my district?
A I applied to Capt. Carter, if I am not mistaken, in August 1892, for a position, and when he asked what qualifications I had, I mentioned having located the Macon & Atlantic railroad and the fact that I had located the crossing at the Oconee river, and made a topographical drawing for submission; I didn't know at that time that it was any where near, and he produced it from the records and my name was on it. I was employed by you from that time until the yellow fever epidemic in Brunswick.
153 Q Were you not inspector of the work in Savannah harbor, where the brush fascine mattresses were being made?
A Yes sir.
Q Were not your instructions to see that all the work was done according to the specifications, and did you not see that it was so done?
A I did, sir.
Q (By Major Adams) Give us the dates of your employment?
A I went to work on the Savannah river in December 1892, and was put in charge under Mr. Coulson, Assistant Engineer, in January, 1893, and I remained there until probably April, I wont be certain.
Q What year?
A 1893. I was put on tide gage work in Brunswick harbor and other similar work of its class, under Mr. Coulson, and at his death under Capt. Carter. All the mat work and the fascines came under my personal supervision.

Q When did your employment on the Savannah river terminate?

A On the Savannah river or with the Savannah office?

Q On the Savannah river?

A In April, 1893.

154 Q When did your employment in connection with the office terminate?

A At the time of the yellow fever epidemic at Brunswick.

Q What year?

A I think it was the same year, it may have been a year later.

Q (By Col. Gillespie) You say you followed the specifications?

A Yes sir.

Q What type did you build?

Q We built the fascines into mattresses.

Q At that time you read those specifications?

A Yes sir.

Q There are three designs, which design did you use at that time?

A The mattress which we constructed had a bottom grillage of poles—the third design is the design we used, for the protection of the pile training wall I used a closely woven mat.

Q Confine yourself strictly to the question; I asked you what design you used there, what design that is described in those specifications?

155 A I used the third design for that training wall, and I used a lighter mat to protect the base of the training wall.

Q Was that described in the specifications?

A I don't know whether there is any description of that in the specifications or not; it is simply a protection at the base of the training wall to prevent it from scouring.

Q (By Major Adams) Is there anything in the specifications that authorizes that modification?

A Yes sir, I think there is, I think that the specifications state—

Q (By Capt. Carter) Is there not a clause in the specifications, Mr. Ensey, that the United States reserves the right to make alterations in the details, provided such alterations do not involve extra expense, etc?

A I referred to that.

Q As a matter of fact, did not this minor modification become necessary for engineering reasons?

A Yes sir.

Q Was it for the benefit or the interest of the United States?

A It certainly was, sir, in my estimation.

Q Did those alterations diminish the cost to the contractor?

A No sir, the cost to the contractor in those changes was increased. There was considerable talk on the work among the contractors at that time and dissatisfaction, in fact, I had myself some personal talk with them, and a little trouble several times about modifying the work, but of course, I had my instructions and I could not change them.

Q Were not the fascines that were brought on the work perfectly choked?

A They were. When I was put in charge of the work, when I first went on the work before I was put in charge of Mr. Coleson, the first work you gave me was on the brush barge, filling in the pile training wall with brush; that brush came under my personal inspection, and my business was to put a certain amount into the training wall, keep a record of what went into the training wall, see that the fascines came up to a certain measure—that was the average, and I made it my business to see that the fascines were up to specifications, and in the construction of the mat I would not allow the
157 use of any fascines that I considered below the specifications.

Q As a matter of fact, did not the fascines run larger than the specifications required?

A They averaged considerably larger.

Col. Gillespie:—Are you referring to the fascines delivered separately, or those built into the mats?

Capt. Carter:—Both.

Q (By Capt. Carter) Were the fascines made into mattresses on the work when you came there?

A Yes sir.

Q Is it not possible for any intelligent inspector to properly examine fascines when they are on barges, whether they have been made into mattresses or not?

A Yes sir. When I would sink a mat, the first thing I would do would be to take a sounding over the mat carefully to know the thickness of the mat, and I would look with

a great deal of suspicion on any inadequacy in the height of the wall.

Q Could you not by examination before it went into the work tell whether or not it was properly made?

A Any proper examination would reveal any imperfections in the mat.

Q Afterwards you would take a sounding?

158 A Yes sir. I would go out and get on the ranges, stretch a wire and take the distances on that wire from a mark.

Q What was your object in sounding?

A To test the progress of the wall. Very frequently in heavy weather, when sinking a mat, after the mat would disappear from sight, you couldn't tell whether that mat got on the wall or not; until we ascertained that beyond question, there was no credit given to the contractor for the work, and the rise of the wall was indicated by those soundings.

Q When you were there on that work, on that training wall down there, what was the result of weighting each layer of the mattress with stone?

A The wall was on soft bottom and very frequently that extra weight, any unusual weight on the wall, would cause the sinking of the mat into the bottom. I remember it became a problem in my mind and in Capt. Carter's to design a mat that would not sink into the mud; in other words, to get the altitude, to get the height, without any more weight than would be necessary to keep the mat in position, and after that we used a double course mat and a single course mat.

159 I think I went to Capt. Carter's room at to confer with him on the progress of the work and he was on the work sometimes twice a day.

Q Do you not remember, an officer of engineers, my superior officer, who inspected that work and was satisfied with its progress?

A I remember that case, it was the visit of Col. Craighill. He stood on the decks of the Angler, and saw me build that mat. I had no idea he was there or any where in the neighborhood. He saw me sink it, and I sank it exactly as I always did. I heard his remarks, and they were very favorable to the work.

Q (Bv Col. Gillespie) Whereabouts was that work?

A The training wall that I refer to is at Venus Point, somewhere near the neighborhood of the lower flat.

Q How far is that from here?

A I suppose that would be nine or ten miles.

Q You say that Capt. Carter would go down there twice a day?

A Capt. Carter would come down the river twice a day occasionally, sometimes. Capt. Carter came down the river one time and some one had tied one of the barges, against orders, to some of the piling recently driven, and
160 a gale struck them and pulled the piling out, and when Capt. Carter came along, he had me have the pile driven over again. I investigated that wall to see if it was according to the specifications; I spent two days on that work and I gave the contractor no credit for it. I found so much carelessness in the construction of the wall, that I made a report of it.

Q Who was the inspector in charge of it?

A I believe his name was Hale (or Hill).

Q Was that replaced at the expense of the contractor?

A Yes sir.

Q Had you not orders to see that the specifications were carried out properly, the work done properly, and allow no favors whatever to the contractors, except what could be properly shown to them?

A Those were my orders.

Q Was not that the general understanding on all the work?

A It was. That was what I gave my inspectors, they all understood it.

Q Do you know as a matter of fact that every one on the river, every one on the work, understood it the same way?

161 A Yes sir.

Q Do you know that if any man had been suspected of showing the slightest favors improperly to the contractors, he would have been dismissed immediately?

Q Were not my instructions as follows, see whether you remember it or not, "I want this work carried on properly according to the specifications, but if any contractor can devise,—?

Major Adams.—I submit, the proper way to ask the question is to ask him what his instructions were.

A My instructions were, as well as I can remember them, to the effect—I had my specifications furnished me—that I was to confine myself to those specfications, with such exceptions as any complication on the work might cause. You under-

stand how hard it is to be iron-clad in following the specifications, as conditions may arise under which to adhere to the specifications rigidly would be impossible. With those exceptions I was to be governed entirely by the specifications, except that should the contractor himself devise any scheme by which the work could be properly and adequately carried on in a manner that would afford the same lasting result
162 that the specifications called for, I should let him do it.

Q Were you permitted to make any change whatever from the iron-clad specifications without my permission?

A No sir.

Q If any change was made, did it from your knowledge and experience as an engineer, afford any benefit whatever to the contractor?

A No sir, it did not.

Q Did it afford any benefit to the United States?

A Yes sir, in every instance where a change was made, it was made with a view to benefit the work of the United States.

Q Were those changes radical? or were they minor changes, such as any intelligent engineer could make?

A I think they were of minor importance, and made very little difference. They were simply matters of detail. The main specifications, the main work, was carried on so far as I could see, I know it was in my department, absolutely up to the specifications.

Q (By Col. Gillespie) Now did you ever permit any departure, did you ever feel that you were at liberty to allow a contractor to do anything not specially provided for in the specifications?

163 A No sir, I would not make any changes without seeing Capt. Carter and submitting them to him. There were no changes made, except doubling the courses of mattresses, which is a very sensible thing to do, in my estimation. The main point was to get the mattress in the water and settled, and avoid the expense of stone and the danger of overweighting and pushing the mats into the soft mud.

Q Was there any danger of not having weight enough on the wall?

A I don't think so.

Q (By Capt. Carter) Was there any danger of having too much weight on the wall?

A Yes sir. Part of that wall was built in about thirty feet of water, with a heavy tide and stream and an unusual

tide running over the top of such a wall, would have a tendency to turn it over it if was weighted too heavy. Not only that, I am speaking now of the top weight, but it would tell most disastrously on the wall if the weight was sufficient to push it into the mud.

Q What would be the effect in such a case on the mat?

A I think the weight should be distributed evenly
164 through the wall, with a reasonable exposure, but I think a wall that was heavily capped on top with rock, in such a case it would over balance and have a tendency to turn over.

Q (By Major Adams) What was the width of this wall, thirty feet?

A I think the width was about ninety feet, I am speaking from memory. My instructions were to make the slope one and a half to one.

Q (By Col. Gillespie) You didn't heavily weight it, fearing to overturn it?

A We sank every mat, we sank it securely anchored. The idea was to get the mat down, and not put too much rock on it for fear of sinking the mat in the mud.

Q (By Capt. Carter) You can run a pole down there thirty or forty feet by hand?

A Yes sir.

Q Is not the bottom of the Savannah river generally soft?

A Yes sir.

Major Adams:—Had you not better get the information from the witness, rather than to inform the witness what you want?

The Witness:—That is the point I was trying to establish.

165 Major Raymond:—This is not a court. I would like to have Capt. Carter permitted to present his defense as he wishes.

Q (By Captain. Carter) Do you know of any instance whatever, or have you ever heard of any instance whatever where an inspector has been permitted to unjustly favor any contractor?

A No sir.

Q What would have happened if an inspector had done that?

A He would have been removed at once.

Q Were you familiar with the instructions given to carry on that work while you were here?

A I was.

Q Were you not associated with other inspectors down the river, and did you not have other inspectors under your charge?

166 A I think I had four assistant inspectors under my charge.

Q Was there much mattress work being done except what was under your charge?

A There was none done. I superintended the work myself. I sank every mat with one exception. There was one mat that I didn't personally sink. That happened this way; —Capt. Carter came down the river one day—he saw it, I had instructed one of my sub-inspectors to personally superintend the sinking of the mat while I went below to inspect some tide gauges, and Capt. Carter came there and found no one there to superintend the sinking of the mat. Our instructions were to keep an inspector there; in fact, I myself would be at the mat and personally superintend the building of it and see every length of it as it was built, and I would sink the mat myself, as I was better acquainted with the ranges and in my capacity of engineer I could locate the ranges, and could tell whether it was off line. I was instructed to keep my eye on the mats myself and see to the building of them and the sinking, which I did, as I say with this one exception. Capt Carter came down the river and I was down the river looking at some gauges, comparing them, the tide was at a certain stage, and I left some one there

167 to attend to it.

Q Were any mattresses paid for ever that were not favorably reported on by the inspectors as being sunk according to the specifications, properly?

A Not that I know of.

Q What were the instructions concerning deductions what were the instructions concerning the work in case it did not come up to the specifications, or was not properly done?

A My recollection is that my instructions under those conditions were to make no allowance at all, therefore—I suppose no allowance was made. If I sunk a mat and that mat was off line, and did not yield its quota to increase the vertical height of the wall I gave no estimate.

Q Suppose a mattress fell below the specifications in the method of construction?

A I would not have sunk it.

Q Were not those the general instructions and were they not generally obeyed?

A They were, sir.

Q (By Major Adams) Have you any means of knowing what was paid for?

168 A That point struck me when Capt. Carter asked the question. I have only, of course, general means. The estimates were made from my reports, and I know that when my reports did not include certain amounts of mattresses, for instance—that the contractor had put down there, they would come to me and want to know why I did not give them credit for them, and I referred them always to headquarters. By that way I know. I have simply only that means of deciding whether they were paid for or not. It stands to reason that if a contractor were paid for so many feet of mat, he would not come and want to know why he was not paid for it. That is the only way I have of finding that out, simply by deduction.

Q (By Capt. Carter) Were the records made up by the clerical force in the office?

A Yes sir.

Q You don't know anything more than that you simply saw that the mattresses and fascines were built according to specifications, that the work was properly done, and reported if every thing was correct?

A That was the extent of my work. I had nothing to do with the estimates or anything of that sort. I simply
169 saw that the work was carried on according to the specifications, and made a corresponding report to the office.

Q (By Col. Gillespie) Did I understand you to say that nobody was at the place where the fascines were made?

A I was instructed—

Q From your personal knowledge was any one on the mattress field when those mattresses were made and delivered ready for sinking?

A No sir, I made them myself.

Q Were the fascines made?

A The fascines were brought down on barges and I made the mattresses.

Q The fascines were made and delivered and the contractor made the mattresses under your supervision?

A Yes sir.

Q (By Capt. Gillette) You stated first that you were instructed to carry out the construction strictly according to specifications. Do you mean by these three types described and the fascines described in paragraph 40. Do you know that the fascines in paragraph 40 are from sixty to one hundred feet long; did you carry that out?

Capt. Carter:—The specifications say twelve to fifteen
170 one hundred feet.

Capt. Gillette:—I believe you are right about that.

The Witness:—I have got to refresh my memory (referring to specifications). The fascines here are described as made of "live brush of cedar, water oak, myrtle, sweet gum, or any other variety of wood approved by the engineer officer in charge. The fascines will be from twelve to one hundred feet in length and must be compressed rightly by an approved form of choker, to a diameter of nine inches, at intervals of two feet, where they must be bound firmly with wire or tarred rope of approved strength." Of course, these fascines were built in such lengths as the size of the mattress we made required. My recollection is that the right length of the fascines was fifteen feet.

Q The question I asked you was did you carry out those specifications. The specifications prescribe three types of mattress; there is a prescribed method of making the fascines, and there is also a general provision for variation from the prescribed types. Did you carry out the specifications as prescribed, or according to the variations for which you got instructions?

A I got no instructions to make any variation.

171 Q Why did you weave those mattresses with wire?

A We wove the mattresses with wire protecting the bottom of the training wall.

Q That was not in the specifications?

A That was not in the mattress work, that was simply to protect the bottom of the training wall.

Q How did you report it, as mattresses or cubic yards of fascines?

A I don't remember now.

Q What do you think?

A I think we probably reported it as mats.

Q Then you put in something not prescribed in the specifications. did you or did you not?

A I can't say that it is not prescribed in the specifications.

Q Look at them?

A I don't know whether I can find it here or not. The point was simply—

Q I am not asking you for engineering questions, I am asking you simply for facts, are those prescribed in the specifications?

A I could not say whether they are or not.

172 Q Well, they are not? The specifications in paragraph 39 speaks of the brush being trimmed, was it trimmed?

A Yes sir, it was. I consider the fascines that I used on that work to be absolutely up to those specifications.

Q "They must be compressed tightly." Were they compressed tightly?

A They were.

Q How do you know?

A I could tell by the way they were handled. Brush put up loosely in fascines would not stand the rough handling that they got.

Q They say, "by an approved form of choker." Was an approved form of choker used?

A I was not on that inspection.

Q You don't know anything about that?

A No sir.

Q "To a diameter of nine inches." Were they choked to a diameter of nine inches?

A I am very sure that they were.

Q I thought you testified that they sometimes were twelve to fifteen inches, that they averaged fifteen inches?

173 A I measured some that measured as much as sixteen inches.

Q Were the generality of them choked to nine inches?

A I think they were nine inches or better.

Q I did not ask you whether they were "nine inches or better"?

A That is getting down rather fine to say that each separate fascine was choked to nine inches.

Q You testified that the bulk of them were fifteen inches?

A I never intended that, sir.

Q (By Major Adams) Have you had any connection with the work in this district since 1893?

A Yes sir, I did dredging work in Jekyll creek and gauge work, I believe in 1894, under Mr. Giesler.

Q Did you do any other work?

A No sir.

Q Have you had any opportunity of refreshing your memory in regard to work on the Savannah river, since 1893?

A None at all, sir.

Q (By Capt. Gillette) You spoke of the advantage of putting one mat on top of the other, that the top mat-
174 tress would help sink the bottom mattress?

A The mats were made of green brush and consequently were heavier than dry brush; in building that training wall it was the chief aim—I was closely instructed and shown just the design that was to be gotten at, and the scheme, so that I could become familiar with the idea itself, and could do my work intelligently. That idea in that training wall, as I understood it, was to get the height and such a weight as would make it stable, but would not drive it into the soft mud bottom. If we could sink three to five mats at once it would save that much time in sinking.

Q After you got down ten feet under water, how would a mat on top help the others sinking?

A When you get a mat down ten feet under water its a very simple matter to keep it going. It seems very plain that if you put one mat on top of another that it would take less weight to sink the two than to sink the one, and those mats were very heavy.

Q Does it weight it after both are submerged?

A No sir, it does not.

Q Was the bulk of the work that you did according to the printed specifications, or according to the variations allowed by those specifications?

175 A The variations, I will say, were just in minor details, according to my best knowledge, no favors were allowed and not the slightest variation in any way. I was said to be a very strict inspector by the contractors, and Mr. Coleson, when he put me on the work, told me that I was to accept no favors from the contractors and never to show them favors unless I could do so without in any way injuring the work; not to act the bear with the contractors or work any hardship on them because I could do it, and under no conditions to ever accept any little token of esteem. The contractor told me himself that Mr. Coleson carried on the work at Fernandina so conscientiously to himself, to the office and to all the contractors, and that at the same time the contractors appreciated his work, and when they wanted to compliment him after it was all concluded satisfactorily, he

declined to accept or take any notice of any appreciation that they would show him as being due him, as he had simply done his duty under Capt. Carter, strictly. That is exactly what I did in every piece of the work.

Capt. Carter:—Mr. Coleson is dead.

Major Adams:—Did Mr. Cooper succeed him?

A Mr. Ensey succeeded him. Mr. Coleson died of
176 scarlet fever after a few days' sickness, and then I thought of bringing back Mr. Cooper and sent for him and brought him back, feeling that Mr. Ensey's experience on river work had not been long enough.

Q (By Capt. Gillette) This system of building mattresses on barges and launching them, when did that commence?

A That was the way I built the first mat.

Q Launching it from the side of a barge?

A That was the way I did.

Q Was the system of launching from the side of the barge, the mattresses being built at the camp, started when you were here?

A No sir, they were just built on the barge and launched as we built them.

Q (By Col. Gillespie) Do I understand you to say that you built three mats on the barge at once?

A We built them right on the barge.

Q You don't remember the specifications now, the details of them probably, but do you not remember this, were you permitted to build any mattress either by the iron-clad, so-called, specifications, the rigid type, I mean, mentioned in there, or by a provision in the specification which permitted the engineer in charge to modify that type slightly, outside of his modification from that rigid type, did you build anything?

A No sir.

177 Q In the course of the work were there any modifications from the rigid type that were not for the interest of the United States?

A In my estimation they were for the interest of the United States.

Q Were there any modifications from the rigid type, the alteration of which you say were authorized by these specifications, which were for the benefit of the contractor?

A No sir.

Q (By Col. Gillespie) Do you think you would have been

authorized by the specifications to have wholly omitted all of the mattress work?

A I would not be authorized to make any change in any of the work without instructions from Capt. Carter.

Q I thought you said any change could be made if the integrity of the work was not affected?

A I think you misunderstood me. I said that there
178 are times when you can't follow instructions, there are circumstances occasionally when it is impossible for you to get instructions.

Q You mean emergency work?

A Yes sir. In those cases you have got to use your own head.

Q What would you do in such cases?

A Use my own judgment and do the very best thing I could for the good of the work and the interest of the United States, and make a written report.

Q (By Capt. Carter) Would you be authorized to do anything under these modifications except what was approved by the officer in charge, except in cases of emergency, which would be reported afterwards?

A Only in emergencies.

Q Was any mattress work recommended for payment except such as in your judgment was for the best interest of the United States and according to the provisions of the specifications?

A No sir.

Q Were any recommended by you, or would any have been recommended by you, which, even if they had been for
the interest of the United States, would have been greatly
179 for the interest of the contract?

A If they were for the interest of the United States and the work was well done, I would recommend it.

Q Without recommending a certain deduction?

A I would recommend any deduction that seemed to be reasonable.

Q (By Col. Gillespie) Did you ever build one single mat according to any one of the designs mentioned in these specifications?

A We built them according to the third design.

Q You followed that absolutely without change?

A I think so, sir.

Q Just read the designs (witness refers to specifications)

A Yes sir, that was the design.

Q Were your instructions to build, and did you build under your instructions any one of those designs?

A Yes sir.

Q Absolutely according to the specifications, and without change?

A Yes sir. That third design is the mat I used.

Q Absolutely?

A Yes sir.

180 Q Didn't I understand you to say that you were authorized to make changes?

A Not in that mat, sir. We did make changes in the mat used in the protection of the bottom of the training wall.

Q Then I understand you to say absolutely that you built while you were there, and while it was under your supervision, the mattresses according to design No. 3, without variation or change?

A Yes sir. Those were my instructions to use that design as nearly as I was capable of doing, and I used it.

Q Did you get those instructions in writing?

A Yes sir. To the best of my knowledge there was absolutely no variation from the design.

Q (By Capt. Gillette) Can you produce the writing you got?

A I hardly think so.

Q Do you think you could find it if you were allowed to go through the files of the office?

A I don't know whether it is in the office. I got my mail down river, the mail I had at that time. I have got at home quite a large bundle of official letters, and if I thought
181 they would have been needed, I could probably have had them here. It would necessitate my going for them myself several hundred miles, and that would be out of the question.

Q You remember positively that you got such official letters?

A I received those letters at intervals. Whenever there was any change on the work, or whenever any new work was contemplated, I was written a letter of instructions that went into matters of detail, and afterwards I would talk it over with Capt. Carter, so as to get at the gist and bottom of the whole scheme.

Q (By Major Adams) Who were those letters from?

A Capt. O. M. Carter.

Q They didn't come through the Assistant Engineer?

A No sir.

Q (By Capt. Gillette) You have received letters giving you specific instructions, and you built those mattresses strictly according to specifications of the third design?

A Yes sir.

Major Adams:—I should like to have the office copy of those letters produced.

Major Gillespie:—Capt. Gillette, you will furnish the
182 the board with copies of the letters which Mr. Ensey says he received from Capt. Carter?

Capt. Gillette:—I can find no such letters.

P. J. KEATING, called by Capt. Carter:—

Q (By Capt. Carter) You have been inspector for me on some of the work in Savannah harbor, have you not?

A Yes sir.

Capt. Gillette:—Give dates?

A I am not able to do that off-hand. I began in the capacity of boatman.

Q (By Capt. Carter) Give years?

A In 1893, I think I began. In March 1894, I think it was, I was placed in charge of that work. I was in charge of that, the pile work, until June 18, 1894, I think it was. My title was "boatman" all the time.

Q Have you not been employed in other capacities since?

A Yes sir.

Q Do you remember any instance when I thought that your supervision of the work was not as rigid as I thought it should be?

183 A Yes sir, I do.

Q Do you remember what I said to you?

A Yes sir, I was reprimanded by you on one occasion; that was the only reprimand that I received.

Q Were you not instructed to disallow the work which I thought had not come up to the requirement, and did it not have to be replaced by other work?

A Yes sir.

Q (By Col. Gillespie) What was this; bring it out?

A I was ordered to repair some pile work on one of the spur dams; some of the piles forming the clusters at the end of the spur dam, were damaged, old and decayed, and I was

ordered to replace the piling. Mr. Cooper, the Assistant Engineer, told me to replace only the piling that was absolutely necessary, and some of the clusters had been struct by the steamers and knocked crooked, which I was not ordered to replace. This piling was out of line, and when I drove the other piling down I drive them deeper than they really should have been, and it made them look bad, and Capt. Carter reprimanded me for it. The work didn't look well at all.

Q Didn't I order you to have the contractor repair it at his own expense?

184 A You ordered him to repair it, Captain, but about repairing at his own expense, I really don't remember.

Q Were you permitted to show any favors to contractors?

A No sir, none at all.

Q Did you try to do your duty properly?

A Yes sir.

Q Were you not at one time, I think in 1895, sent to inspect mattresses at the mattress camps?

A Yes sir.

Q Did you not report that they were being built so well that you were relieved from that and brought back?

A Yes sir.

Q You remarked afterwards that they were built so well that you had worked yourself out of a job?

A Yes sir.

" (By Col. Gillespie) Did you have a copy of the specifications with you?

A No sir, I was instructed by the Assistant Engineer just what was required.

Q Who was the Assistant Engineer?

A Mr. Cooper.

Q Did he give you a letter?

185 A No sir, I received a letter from Capt. Carter to call on Mr. Cooper at his house, and there I received instructions, verbally.

Q This was in 1895?

A I think it was the 17th, of June, 1895.

Q That is two years ago now?

A Yes sir. I have all my letters at home and I can tell you just to a day.

Q What were you instructed to do when you went to the camp?

A I was instructed to see that those mats were built better than they had been building them.

A In what respect?

A They were built of very shabby, poor material. Mr. Cooper said that the mats going down on the river then had a good many holes in them, and that they were honeycombed, and told me to see that the brush was laid up close together, and that they were made of better brush and made better than they had been making them.

Q What did you go there specially to do?

A That was it, to superintend the construction of the mats.

Q Did they make better mats than they had been making?

186 Yes sir.

Q (By Capt. Gillette) How long did you stay there?

A Six weeks, I think, from the 18th, of June to the 26th, of July.

Q (By Capt. Carter) Were the mattresses satisfactory to the Assistant Engineer when you returned?

A I suppose so, I heard no complaints.

Q Did you report that they were satisfactory?

A Yes sir.

Q Satisfactory according to the instructions you received from him?

A Yes sir.

Q (By Capt. Gillette) Satisfactory to whom?

A Mr. Cooper.

Q How do you know?

A I only say that there was no complaint made, that's all.

Q (By Col. Gillespie) What do you mean by "honeycombed?"

A I mean that where the ends of the brush came together, they were not lapped properly, and there was a space between them. in fact, a man could crawl down between the different layers—I know that is what Mr. Cooper told me

187 that he had seen a man crawl down between the different layers. The mattresses were built one layer on top of another. When I went out there I saw that the layers were better lapped.

Col. Gillespie:—Capt. Carter, I understand that the mattresses were put down at this time in five courses?

Capt. Carter:—Mr. Cooper reported that the mats were not

being built according to specifications, and I sent this man out there.

Q (By Col. Gillespie) There were several mattresses, one on top of the other.

A Yes sir.

Q (By Major Raymond) I did not quite understand what you meant when you said that a man could crawl in between the layers; was one mat laid upon another?

A Yes sir.

Q Was that because the brush was crooked, so that the mats were not horizontal?

A Because they didn't come together at the ends; the bundles didn't come together at the ends quite. Two, three or four layers were placed across each other, and under each layer of brush a man could crawl down.

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188 Capt. Carter:—Some statements have been made here about my inspectors, that they did not have instructions to carry out the specifications. I simply want to prove that those statements are not true by these other witnesses, who I think heard me give those instructions. I don't know whether it is worth while to bring them or not.

Col. Gillespie:—Anything you find necessary, Captain, the board will hear.

Capt. Carter:—Something has been said about that Florida rock. I want to show that those specifications contemplated exactly the kind of material that is being used on the work, and that all bids were made with that understanding.

Capt. Gillette:—What do you mean by the specifications "contemplating" Florida rock? I do not find it in the specifications.

Capt. Carter:—I mean by that that that was the idea in my brain. That may mean something else to another man, but in order that I might be certain that people understood them, I explained what that meant to the bidders, so that there could be no misunderstanding. I took a sample of the Florida stone and had it in my office and sent it down to Mr.

189 Rowlinski, a druggist here, to have its specific gravity determined, and it came back to me marked "2.4". Then I put that in the specifications, and it never occurred to me but that that was about the average. It is very likely that specific gravity may have fallen below this; if it does run below that it was carelessness to put it in, but I wanted

nothing but soft stone, and everybody that bid on the work understood it, and their prices were based on it.

Capt. Gillette:—Did you contemplate using Florida stone at Augusta?

A No sir, I didn't.

Capt. Gillette:—Your specifications are precisely the same, 2.4.

Capt. Carter:—Well, that is an error. I contemplated using the stone that is within a few hundred yards of the work at Augusta.

Capt. Gillette:—How were they to know that those specifications contemplated Florida stone?

Capt. Carter:—It was my custom in preparing those specifications—I see now Capt. Gillette, that of course, they are capable of misinterpretation, but that didn't occur to me. When I came here, we had certain specifications for the work and when I found any difficulty with the contractors, I would make a pencil memorandum of that, and make the changes
190 that I thought necessary the next year, and in preparing new specifications I used the old specifications with such changes as I had noted, and in this way the specifications were made. Little changes in that way were made, and there may have been errors. I now see that they are capable of misinterpretation.

Capt. Gillette:—Was any of this Florida stone used on the public works at the time you came here?

Capt. Carter: No sir, it all came out about the time they found the phosphate rock in Florida.

Capt. Gillette:—Have you used any New England stone since the discovery of the rock in Florida?

Capt. Carter:—Yes sir, I have allowed them to use ballast rock. We used to use granite, and I was notified that it lying there as shiny and smooth as at the time when it was put down.

Col. Gillespie:—Was there any development of quarries in Florida upon which you could rely to get this stone?

Capt. Carter:—Yes sir—of course, there was no development of quarries, that stone was picked up over the ground in nodules here and there. It is a peculiar formation.

Col. Gillespie:—Returning now to your explanation of the 2.4, I notice here that you specify 2.5, and then change
191 to 2.4.

Capt. Carter:—I sent this piece after—

Col. Gillespie:—Where did you get that 2.5?

Capt. Carter;—That I don't remember. I suppose I must have taken that 2.5 from the specific gravity of some piece of stone. My custom was to send pieces of stone and have them ascertain its specific gravity. It was the custom when I came here to allow claims of contractors for doing work that was not in the specifications, and I wanted to keep that down, and I put a number of things in the specifications to guard against it, so that the contractor could have no claim on the government, because I could compel him to do certain things. I didn't want to use that as a strict basis, but simply so that I could use it if the contractor wanted to put in something that was not suitable.

T. J. DANIELS, called by Capt. Carter:

Q (By Capt. Carter) How long have you been employed on this work here?

A Since 1882.

Q From time to time have you been inspector on the work?

A Since, 1893, I think sir.

192 Q Before that time, had you seen anything of the work in this district?

A Passing up and down the river, I did.

Q But not as inspector?

A Not as inspector.

Q When you were inspector on the work, was a copy of the specifications furnished you?

A Yes sir.

Q How did you understand that the fascines used in the work compared with the specifications?

A They were up to the specifications at that time.

Q Were you instructed afterwards in any way, or in any way given to understand that those fascines did not come up to the specifications?

A Afterward, when Capt. Gillette was in charge, he told me that the mats were not of the type described in the specifications.

Q Prior to that time did you understand that the mattresses were being improperly built?

A Yes sir.

Q You don't understand me, that they were being improperly built?

A No sir, they were being built according to the 193 specifications while you were in charge.

Q Were there any difference in the interpretation of the specifications after I came here, from what there was before I left?

A Mr. Cooper told me to build the mattresses according to the specifications.

Q During that time did Mr. Cooper suggest to you that the mattresses were not built according to the specifications?

A No sir.

Q Were they built according to the specifications?

A I believe it was, the work went on just the same.

Q Have you received any orders about allowing favors to contractors?

A You told me at one time to see that the United States got their full benefit, and not to allow them any privileges until the United States got their benefits.

Q Were you ordered to see that the work was done according to the specifications?

A Yes sir.

Q Were not those instructions general?

A As far as I know, yes sir.

Q Would you have allowed any benefit you consid-
194 ered improper to a contractor?

A No sir, I don't think I would.

Q Would any of the inspectors on the work, so far as you know?

A Not so far as I know.

Q What would have happened, do you think, if I had suspected that they were doing anything improper?

A I suppose you would have discharged them.

Q Was that thoroughly understood?

A I could not say about others, but I was always under that impression myself; I speak for myself and not for anybody else. I consider that that was understood by others as well as myself, they were as scared of their position as I was.

Q Scared if you didn't do right?

A My head would have been cut off if I didn't do right.

Q The specifications prescribed a definite specified design,

or three or them, for building mattresses when there were minor modifications in those designs, were they for the interests of the United States in your opinion, or not?

A While you were here I believe your mats were better than they are now. I believe the scraggly bundles
195 are better than those smooth bundles.

Q Were the fascines always properly choked?

A As far as I know, they were. They are right now and will show for themselves. Of course, some of them would work a little loose. You will find loose ones right there now.

Q Would it have been possible or practicable to have gotten fascines for the construction of this work at any reasonable cost with perfectly tight chokers that will stay right until they go in the work?

A No sir, I don't think so. The wood is green, it lays on the bank untrimmed.

Q The specifications require the mattresses to be at least nine inches choked, to be at least nine inches in diameter?

A Yes sir, the bundle.

Q Did the contractor, as a rule, or ever, on an average, put in any more than that amount of material?

A I think he did.

Q Did he put in any more?

A So far as I know, those bundles measured more than those do now.

Q Have you ever heard Mr. Cooper say that all the
196 work on the Savannah river was first class and properly done?

A I believe I have, but I would not swear to it. I think that I have heard him say it.

Q When?

A I could not say.

Q Has that been the universal feeling as expressed at various times?

A I have not heard anything to the contrary.

Q (By Col. Gillespie) To whom did Mr. Cooper make this statement?

A I don't know.

Q It was just a remark?

A Yes sir, it was just a remark. I believed it. He evidently said so or intimated as much.

Q (By Capt. Carter) Was there anything in Mr. Cooper's manner to indicate to you that he thought that the work was not done properly?

A No sir, not to me.

Q His statement was not made to you lately?

A My wife expected to be confined in August, and I asked if I could get a month off in August and he told me to make an application to Capt. Carter, and it would be all right, that I could have as much time as I wanted. I went to the
197 doctor, and he told me it would be between the twelfth and the twenty-second. On the night it occurred or previous to that, he said to me that he would attend to my work. On the 9th, on the morning of the 9th, I went down the river and got a telephone message to the quarantine station, that my wife had been confined, and I came into town. He got that same message. I came to town and went to the office of the Atlantic Contracting Co., and tried to get him, but I could not get him. On Friday morning I saw him and he said, "This is the devil on me." I said I would like to have two weeks off until she was out of bed. He said that I had better come back to work as soon as the ten days were up, which was on Tuesday. I said that on Tuesday morning I would be there to attend to business. On Tuesday morning I got a message over the telephone from Mr. Cooper Capt. Gillette said to report to him. Mr. Cooper's message was that I must report for duty at once, which I did, and that was the first time that I knew, or that I heard that the mats were not built according to specifications.

Q Prior to that time you always understood that the mats were built according to specifications?

A Yes sir.

198 Q There is a question about some stone that was put on the mattress work; I ordered the amount of stone increased a little bit, and you spoke to me afterwards about permitting it to go in in smooth water. Did I give you permission to allow the mattresses to be sunk with less than two hundred yards?

A You told me to allow them to use the least amount they could, but that it was at the contractor's risk until they put down two hundred yards.

Q I did not change the order about the two hundred yards?

A No sir.

Q Did I tell you to report that to Mr. Cooper?

A I reported it to him.

Q When instructions were given to you or to any sub-inspector, the rule was that you were to report it to your superior officer?

A Yes sir. He was my superior officer and I reported it to him.

Q Do you remember whether I diminished the amount of stone?

A No sir, I do not. It never has been less than one hundred and thirty yards. I took on myself to sink two mats
199 of seventy-one yards apiece.

Q Were my instructions concerning the amount of stone modified, except to allow the work to progress rapidly, and did that permit the contractor to put in anything that was at the government risk?

A I understood that I was to allow the contractor to put in anything, but it was at his own risk.

Q Did you ever allow any contractor to put in less than what was authorized, except that it was at his own risk until the amount of authorized was put on?

A I informed Mr. Gaynor of that fact, that it was at his own risk. I think Mr. Gaynor can verify my statement.

Q When there was any difficulty concerning the mattress courses not being built properly, or being lost in sinking, what were your instructions?

A To make a deduction.

Q Didn't you do that?

A I did.

Q Were those deductions satisfactory to the contractor always or not?

A We had a fuss with a foreman. One time he claimed twenty one bundles that went adrift, and I reported the
200 matter to Mr. Cooper. I has a fuss with Mr. Gaynor too.

Q (By Col. Gillespie) What set them adrift?

A The sea broke them up.

Q Before you used them?

A Yes sir.

Q And for that reason you recommended a deduction?

A I recommended a course and he claimed only twenty one bundles.

Q (By Capt. Carter) So far as you know were there any changes in the requirements of the fascines; were the fascines constructed as well at the close as at the beginning of the work; was there any change in the fascines?

A Not one.

Q I notice that you make a statement here that the fas-

cines used on the work during my administration were not up to the specifications. Was that because you thought at the time that they were not up to the specifications, or was that because you got the impression from some one else?

A I got the impression that they were not up to the specifications, that the the bundles of brush we spoke of as fascines were not fascines, and that the bundles we are using now were government fascines.

Q Who described (?) the present fascines?

201 A Mr. Cooper, he was the only man I received instructions from.

Q (By Col. Gillespie) To make that query intelligible, were you guided by what you thought the specifications meant, or were you guided by the interpretation given them by Mr. Cooper; were you governed by Mr. Cooper's instructions?

A He was the assistant in charge and I was subject to his orders.

Q Did it ever occur to you during this construction that there was any difference between the specifications and the instructions Mr. Cooper gave you?

A I supposed that the specifications were carried out.

Q Were you guided in the construction of the fascines by the specifications?

A Yes sir.

Q But you say now that Mr. Cooper gave you instructions?

A No sir, I did not say that Mr. Cooer gave me instructions, I didn't say that anybody gave me instructions.

Q During the construction of those mattresses here, going back to 1893, for two or three years, you had the speci-

202 fications in your hand?

A I did.

Q Did you guide yourself in the construction of those fascines by the specifications, or did you govern yourself by the instructions received from Mr. Cooper?

A If so, I thought they were right. I thought they were according to the specifications previous to this.

Q Did Mr. Cooper give you any instructions when you came here?

A He was not in charge when I came here.

Q Who was?

A Mr. Coleson.

Q What instructions did he give you?

A I didn't know that he gave me any.

Q Did he carry out the specifications?
A Yes sir, what I thought was right I did.
Q (By Major Adams) What guided you in determining what was right?
A I read the specifications and carried them out as far as I knew.
Q They were rigid types of mattress construction given, the first, second and third designs, then those types were slightly modified; what do you think was the result to
203 the United States of those slight modifications at various times? (By Capt. Carter).
A I would not like to answer that more than to give my private opinion. I say that I believe that your bundles of brush are the best.
Q You called them fascines before?
A Yes sir, previous to your leaving they were called fascines, reported as fascines, and passed the assistant engineer.
Q (By Capt. Gillette) You say that you think the bundles of brush are the best?
A I believe the brush is the best of the two.
Q For what purpose?
A For catching the sand or mud.
Q (By Capt. Carter) You have been on the work for sometime?
A Yes sir, I have been on the river all my life.
Q Do you think it is any advantage to the contractors in building mattresses to build several courses at a time?
A I don't know that there is. They have to have more plant.
Q When it was desired to build those mattresses sev-
204 eral courses at a time, do you remember anything that occurred between yourself or the rest of the inspectors and the contractor's foreman?
A No sir, I do not.
Q I mean in regard to whether he wanted to do it?
A He always complained of any change, and when we started to build those mats there was that kick. Of course, he had to make that kick. They had to have that much more plant so they could build so many more linear feet.
Q You say they had to have more plant, how much more?
A He would have to have estra barges.
Q How many extra barges?
A I don't know, and he would have to have those extra gins.

Q Why did you say the plant would be increased?
A He would have to have the gins as well as the barges to carry the stone.
Q When those orders were given as to the amount of stone were given by me to you, would you consider it your duty to report the matter to your immediate superior officer?
A Repeat that.
Q When I gave you orders or orders came to you direct from me, would it consider it your duty to repeat them
205 to your immediate superior officer, the assistant engineer?
A Yes sir, I did it almost every time.
Q (By Capt. Gillette) Did you write that letter?
A I did.
Q (Handing witness letter, dated Tybee Island, August 18, 1897) which has been read in evidence).
Q Were you furnished information as to the contents of this letter of June 12th, 1897, to the Atlantic Contracting Company, signed "O. M. Carter," copy of which was sent to Mr. Cooper? Were you given instructions by Mr. Cooper?
A Previous to Capt. Carter coming down, he told me that two hundred yards were to be placed on the mats, otherwise nothing farther.
Q That was shortly before Capt. Carter left?
A Shortly after he left,—no, he had not left at that time.
Q You testified that Capt. Carter came down and told you to put them in with less than that number of yards, but that the contractor should be responsible?
A Mr. Cooper came down on the work and said to me, "Mr. Daniels, if you get good weather, you can use two
206 mats a day. Get them down."
Q That was before you were informed about this letter?
A No sir—just about the same time or previously.
Q Did you tell the contractor that it was to be at his risk?
A Yes sir.
Q Did you mean that if any were lost, they were not to be paid for?
A Yes sir.
Q After a mattress went in you reported it to the office?
A Yes sir.
Q You report them, presumably for payment?
A Yes sir, I report them to the assistant engineer, he is the man in charge.

Capt. Carter:—There is one point which my inspectors knew nothing about, and that is this, when the retained per cent due the contractors, was enough to protect the United States, it was the custom to pay the contractors up to the end of the month, and then if any losses took place afterward, I had enough money of his to make him make good those losses at the end of the month. One month the work would be all right, and the next it might be reported injured, and it would have to be repaired at the expense of the contractor.

Capt. Gillette:—If the mattress was destroyed from any cause, how did you manage to correct it?

Capt. Carter:—I corrected it in this way,—I always had the contractor to put in a mattress to replace any that was lost and that were not put in the proper place.

Capt. Gillette:—How did you tell what was lost after it went in the work?

Capt. Carter:—By sounding and examination.

Capt. Gillette: I tried it and found it very unsatisfactory.

The Witness:—I can take a range every on any mat ever sunk. I sunk one mat short and took a range and found it.

Capt. Carter:—Those ranges are used by the pilots.

Q (By Capt. Carter) What do you believe would have happened if you had done anything improper?

A I would have been discharged.

Q If you had known of any inspector that was not carrying out his duty, would you have considered it your duty to have let me know?

208 A I was only looking out for myself; I didn't care about that; I didn't care about what somebody else did.

Q If you thought he was doing something wrong?

A I was always attending to my duty myself.

Q If you had suspected a man of doing wrong, and not injuring the government, would you have reported him?

A I believe I would have reported him. I have a book of rules which says that man's pay is according to the information he gives. I tried to observe that. I tried to get to the top notch.

A You tried to be absolutely honest and fair?

A Yes sir.

Q You showed no advantage to the contractors?

A No sir.

Col. Gillespie:—It appears from the testimony from this letter that has been read, that you required a certain amount

of material immediately put down on the work. Did you make this variation through a written order?

Capt. Carter:—I don't remember whether I did or not. It wasn't exactly a variation, it was more of an explanation. He had no authority to evade that two hundred yards. The two hundred yards of rock were required before the mat-
209 tress would be accepted by the United States. The reason this was done, was because the cyclone season was coming on, I don't know that you are as familiar as I am with the conditions down in this District, I have been here thirteen years. It is very difficult to work on certain places except as certain seasons and times. Along in the fall usuallt there come up cyclones which tear everything all to pieces and delay the work. My object was two-fold, the first was to get the work done within the limits of the appropriation, and the other one was to rush it. Anything that I could do to rush the work and get the result quickly, I would do. It was always in my mind to do anything I could to accomplish that effect and I did it. Seeing the effect of this letter and the inspector reporting to me that the mattresses were holding up, I said "Go ahead, and notify the contractor that the mattress is at his risk until he puts two hundred yards upon it.

Capt. Gillette:—Speaking of the cyclone season, do you think a jetty safely loaded is safer than one that is not?

Capt. Carter: A jetty is perfectly safe with that amount of stone, in my judgment.

Capt. Gillette:—You expected to get that amount on
210 before the cyclone season?

Capt. Carter:—Yes sir; of course, it would be impossible to tell how quickly that will happen. I have had unfinished work stand through a cyclone, and I have had finished work destroyed.

GEORGE H. PALIN, called by Capt. Carter:

Q Have you been employed by me in the Savannah harbar?

A Yes sir, as recorder of dumping.

Q Have you had anything to do with the plant of the Atlantic Contracting Company?

A I had instructions from you several times, they were tying up the plant of the Atlantic Contracting Company to the

training walls and to new jetties, and acting under your instructions, I cut them loose on one occasion, and I ordered them away several times.

Q Have you received any instructions regarding allowing the contractors to do what was right, or otherwise?

A I had positive instructions to allow them to do nothing that was wrong at all, to make them comply strictly with
211 all the rules, and if they tied up to the jetty or there was any violation of the rules at all, I should report it instantly to you.

Q Have you ever heard that there were any other inspector who had any other instructions?

A No sir, most positively I had not.

Q Do you remember whether Mr. Cooper once made a remark about the inspectors concerning how they allowed the work to be done?

A In going down on the Violet one morning with Mr. Cooper to work, Mr. Cooper made the remark that Mr. John Hall was a man who allowed more work to be done that did not come up to the specifications. At another time in going down with Mr .Giesler, to read the tide gauges, I was speaking to Mr. Giesler about the work, and asked why they were so strict in tying up to the training walls, and he made the remark that you were so conscientious about the work coming up to the standard that the least deviation worried you exceedingly.

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212 Capt. Carter:—Capt. Gillette, if you desire to ask me any more questions about the work, I wish you would do it.

Capt. Gillette:—I do not care to ask any more questions.

Capt. Carter:—I have given the reasons which I judged to be good, and I want to know why they are insufficient for you.

Capt. Gillette:—I will answer any questions you may ask me.

Capt. Carter:—If there is anything you want to know, I will be very glad to tell you.

Capt. Gillette:—I think on the Savannah river loose bundles of brush are all right, and it has made walls fairly substantial, if the bidding had been according to the work to be done, as the bidders bid on an expensive description of work, and you used a cheap work, I think it is all wrong.

You accomplished the work about as well, but you would have saved the United States enormous amounts by having them bid on what you used.

Capt. Carter:—There is where you are in error, Capt. Gillette.

Capt. Gillette:—Possibly. At Cumberland sound, as an illustration, not profiting by your lesson on the Savannah river, you asked for bids on the three exact types of mattress
which were bid on before, none of which were used, and
213 which the indications are you never intended to use, and
the work under the contract has been enormously expensive. The amount of jetty work down there under the present contract, has been enormously expensive, approximating $13.50 per cubic yard; the measurement might have shown worse, if the man had gotten clear down to the top of the bottom mattress, but he could not always get there. The measurements were very much in your favor, and with the figures very much in your favor, the work costs $13.50 per cubic yard. That is my objection to your engineering. But if even if it was good, you put in your specifications a heavy mattress and pay for a heavy mattress. While you may have given information to every contractor who sought it, yet it is customary to put such information in specifications where all the bidders can get it.

Capt. Carter:—The specifications do give it.

Capt. Gillette:—The specifications do not call for the brush work that has been constructed. Mr. Giesler has given an estimate of the cost of those things which shows what enormous prices were paid. If you did that carelessly, you were amazingly careless for a man of your reputation.

Capt. Carter:—Mr. Giesler's statement,—as to that I
214 would not say anything against Mr. Giesler; he was a
good man on tide gauge work and office work, but as to estimates of cost, his opinion I don't think worth anything. As a matter of fact, so far as I can tell, from the records I have kept, and the observations that I have made since I came here, those mattresses do cost the contractor in the work sixty-five to ninety-five cents a square yard. This has been arrived at by me in two or three different ways, from bidders who have bid for a long number of years, from conversations with disappointed and unsuccessful contractors and from observations I have made in the mattress camps and on the work, both by myself and in connection with my predecessor, Capt. Bailey. The mattress work of logs in the old days

was much cheaper than brush. The method of putting in those brush mattresses is described in the specifications to the best of my knowledge and belief. I carried out this work here satisfactorily to myself, and I don't believe that there is a man living who could have done better. As to the question of my engineering, I take issue with you, and from the results I have obtained here, my opinion is probably worth something.

Capt. Gillette:—Here and in Cumberland sound?

Capt. Carter:—Yes sir. I have not attained the desired
215 result, result, because I have been ordered away. I can go back there to Cumberland sound and carry to the work to a successful ending for less than the estimate. I have never failed on any work I ever undertook, except a minor piece of work near Darien that we have not had money enough to carry through. The work that has been done on Cumberland sound is only about one fifth in cost of the total work to be done. I have been here for thirteen years and I know all the local conditions.

Capt. Gillette:—Where is Mayport?

Capt. Carter:—At the mouth of the St Johns. The statements as to this work are in the office, and I have not means to verify them, and I assume that may be the same way. Thirteen dollars a cubic yard—I must believe there is an error in that. When those mats were put down and measured I think they were about eight feet, after they had gone down, which was about what we wanted.

Capt. Gillette:—I will submit a profile to the board, showing that they average four and a half feet immediately after sinking.

Capt. Carter:—You mean in thickness?

Capt. Gillette:—Yes sir.

216 Capt. Carter:—Do you mean four and a half feet from the old bottom, or four and a half feet, in the mattress?

Capt. Gillette:—Four and a half feet in the mattress, average. An assistant you spoke of, a man by the name of Marion Twiggs made the estimate.

Capt. Carter:—That is absolutely different from his reports to me. He reported to me that there was no subsidence, but that the jetties were standing up slightly, and that the mattress averaged about eight or eight and a half feet, and that to me was a very satisfactory piece of work, and I ordered him to continue his sounding. At the time I went away, as far as I know, the sounding was being done. If it was

not, it was his duty to do it, and in the absence of any report to the contrary, I presumed that my instructions were carried out. If there was a compression of that mattress immediately after sinking to about half of what it was when it went on the work, that is unknown to me. My idea has always been to put in on that ocean bar larger mats than I put in the Savannah harbor, with the fascines closely choked and made of brush straight as can be obtained. As to that any one that knows anything about mattress construction on the South Atlantic coast, knows that it is impossible to get
217 fascines like those used in the West; it would not be practicable; it would be foolish to attempt it. One hundred dollars a square yard could not get it.

Capt. Gillette:—The contractor told me that he would just as soon make them the way I wanted as the way you did. The mattresses at Mayport, made under the same specifications, cost about seventy to seventy-five cents per square yard, and you paid a dollar ten.

Capt. Carter:—I don't know how that happened. I have had contractors bid for mattress work at a loss. I had some made for about thirty cents a square yard.

Capt. Gillette:—How do you know that they were made at a loss?

Capt. Carter:—I don't know absolutely that they were, but to the best of my information I believe that they were. I awarded that contract because the bid was made by a responsible man by the name of Bangs. He may have done it for the same reason that railroads sometimes carry freight at a loss in order to smash another railroad. Such a bid may or may not mean that a contractor is making money. A contractor may desire to control large works, and may be compelled to lose a good many thousand dollars to obtain control of work and in that way bid below the cost of the work.

218 Capt. Gillette:—Did Bangs in 1894 bid for fifty-seven cents a yard?

Capt. Carter:—I believe he did that to crush a contractor in Jacksonville, so that he would not have him as a competitor in the future.

Capt. Gillette:—How would that pay him?

Capt. Carter:—For this reason, it is this,—a man who is doing work of this kind needs to have, in order to do it well, not only money but experience, a large number of foremen, men conversant with that sort of work, and an organization. That is true of all sorts of contract work. When a man is

unsuccessful and does not get a contract, he is eliminated in the future and ceases to be a dangerous competitor. This is not only my judgment, but you can also ascertain it from men in Jacksonville. I know furthermore that men in bidding again on work, know exactly what they are bidding on. You were speaking about my specifications not having been properly drawn, and I believe in view of these criticisms that have been made that a misinterpretation of them is possible. I explained them clearly to every bidder who came to me, and it did not occur to me that it would not be clear to any one else.

There seems to have been a misinterpretation of my mode.
219 It was impracticable and it would have been unjust and would have subjected an officer to just criticism if he had described the method of doing the work which one company had absolute control of.

Col. Gillespie:—Could you not have stated in the specifications that the mattresses might be built in courses of eight, separated by grillages?

Capt. Carter:—I could have placed that in. That method is patented.

Major Adams:—Explain what is patented.

Capt. Carter:—The thing that I understand that is patented is the method of building and sinking those large layers. It is the method of doing it that is patented.

Major Adams:—It is possible then for a man to put them in position by his own method?

Capt. Carter:—Yes sir; it would be very difficult to do it. I explained to all the contractors how I wanted this work done, and told them to go and look at the work, see how it had been done, and asked them to look at the plant which the last contractor had, and in that way they knew how I desired it built. I see now in view of what has been said, that criticisms can justly be made against this. My object was to have something by which they could get around that patent, and therefore, I spoke of single course mattresses.

220 Major Adams:—Why did you ask in the specifications for a single bid for three designs?

Capt. Carter: I thought it would be necessary to put in a few of those log mattresses only, and I explained that to every one who came here.

Major Adams:—The specifications called for three forms of construction; why did you require a single bid for the three forms?

Capt. Carter:—Of the first and second designs there were

to be only a few mattresses, and it would not make any material difference, it would not make any difference at all to the contractor, and so I put it in that way. All of the mattresses were to be built of the third design, except where I found a very bad bottom where I put in a few of the second design.

Major Raymond:—Would you have obtained any bids, any lower bid, if you had specified in those specifications that only the cheapest style of mattress would be used?

Capt. Carter:—I would not have obtained any cheaper bids, for this reason, that every single contractor knew what I was going to use in the work.

Major Adams:—How did they know it?

Capt. Carter:—I told them.

221 Major Adams:—You ought to have told him in the specifications.

Capt. Carter:—I agree with you now.

Col. Gillespie:—The specifications in themselves are not clear as to what you wanted?

Capt. Carter:—No sir. My project contemplated building them in this way.

Col. Gillespie:—Does it so state?

Capt. Carter:—I don't know whether the specifications state so or not.

Col. Gillespie:—Did the Chief of Engineers know by any letter that you wrote to him that you proposed to construct the third design?

Capt. Carter:—I don't know whether he did or not.

Col. Gillespie:—Was it not your duty to tell him?

Capt. Carter:—I thought I had done so until these criticisms came up. I made out a plan and submitted a project to the Chief of Engineers for carrying out the work, but I always understood that the details of that work were left with the officer in charge.

Col. Gillespie:—Does not the Chief of Engineers call upon you for a project?

Capt. Carter:—Yes sir.

222 Col. Gillespie:—And he approved the specifications?

Capt. Carter:—Yes sir.

Col. Gillespie:—Do those specifications indicate a particular design which you were to adopt?

Capt. Carter:—I believe now that they do not indicate it.

Col. Gillespie:—Then you presented to him a specification which was incomplete?

Capt. Carter:—I did not believe them incomplete at the time, and I do not now except in view of the criticisms, because the knew the Chief of Engineers knew the kind of mattress I was using.

Col. Gillespie:—In order that a contractor might know what particular design you were going to use, he had to be accessible to you, and receive a personal explanation from you?

Capt. Carter:—He would have to do that, or he would have to see somebody else on the work. From the specifications themselves, without any conversation with anybody else, or looking at anything else, he would not know.

Col. Gillespie:—Did any contractor from a distance ask any personal explanation of the specifications from you, so as to know exactly what he was bidding for?

Capt. Carter:—Yes sir.

223 Col. Gillespie:—Did you give them in writing?

Capt. Carter:—I don't know that it was in writing.

Col. Gillespie:—How could you have given it otherwise?

Capt. Carter:—I did most of it orally.

Col. Gillespie:—To different bidders?

Capt. Carter:—Without coming here? By letter, no, sir.

Col. Gillespie:—Did they make any inquiries from you as to what particular work you wanted done under that contract?

Capt. Carter:—You mean writing? contractors came here and asked me. Two men came here, I remember one from Philadedlphia.

Major Adams:—Suppose that some of the contractors, here or there, came here and talked with you, and found out exactly what you proposed to do, and suppose other contractors should bid simply on the specifications, without this information, would you expect to get bids that would be higher from the others?

Capt. Carter:—When a contractor from a distance, who didn't come here at all to see the work, and didn't know the work that was going on here, I intended to send him a sketch of the work, and also tell him what I intended to do.

Major Adams:—Why didn't you put that sketch and that information into your printed specifications?

224 Capt. Carter:—It would have been better if I had put them in. The reason is probably, that in making my specifications, I took the old specification and clipped out portions that related to the work from year to year, and wrote in other portions, and that may have left the specifications not clear. They were clear to me and clear to every bidder.

When a bidder wrote to me for papers, I sent him one copy and wrote him that if he desired to bid on the work, I would send him others. If he desired to bid on the work, I would give him every information concerning it. No man asked for papers to bid on this work except those who came here, or had agents or representatives here, who had access to this office. If any one had we would have given him this information. It would have been better to have put the whole sketch into the specifications.

Major Adams:—Suppose you put out a specification like that, inviting bids, and suppose that one man wanted to bid, and asked to know how much you were going to use of design No. 1, how much you were going to use of design No. 2, and how much of design No. 3, would it have been possible to have given him that information and not given it to every other bidder?

Capt. Carter:—No sir, I gave it to everybody.

Major Adams:—Who came for it?

225 Capt. Carter:—No sir, I gave it to anybody who intended to bid. If a man asks for a copy of the specifications, I send them to him and tell him if he desires to bid, to ask for the remaining copy; if a man does not ask for the remaining copy, he does not intend to bid.

Capt. Gillette:—Did you give the proportions of the three types to any bidder?

Capt. Carter:—I think I gave them to every one.

Capt. Gillette:—Will you name a bidder that you gave them to?

Capt. C: I gave them to a man of the name of Rutherford.

Capt. Gillette:—Will you tell us what proportions you gave him?

Capt. C:—I told him that they would be all number three, with the exception of a few of number one and two. I told him that the proportions were practically infinite, and the difference so slight that it made no difference. I mentioned it to other people, R. G. Ross, of Jacksonville; Mr. Duval, representing the F. C. & P., who desired to bid for the work because he had a railway to the stone, and to the Atlantic Constructing Company. Those are from my memory.

Capt. Gillette:—If a bidder were to make a contract with you under these specifications, what guarantee would he

226 have that you would not require him to use single course log mattresses?

Capt. C:—The guarantee of my honor.

Capt. Gillette:—He has the guarantee of your verbal statement, that contract is between the contractor and the United States, what guarantee has a man got, any of those bidders got, that you will not require him to put in all log mattresses?

Capt. C:—I see the point. There is no guarantee except mine.

Capt. Gillette:—Would it be a good business proposition for him to bid for anything except on the basis of the most expensive type?

Capt. C:—Yes sir, it would be. He would know what I told him would be done.

Capt. Gillette:—That is personal confidence in you individually?

Capt. C:—Yes sir.

Capt. Gillette:—Suppose you were ordered away or should die?

Capt. C:—He would have the interpretation of the specifications as given by me.

Capt. Gillette:—Would you consider that binding, as a business proposition?

227 Capt. C:—The moral enters into this—

Col. Gillespie:—Your personal reputation is not a writing.

Capt. C:—I see that.

Capt. Gillette:—I have asked the assistant engineers that I find in charge of these works for estimates of the cost of building those separate types; did you ever ask those gentlemen for estimates of the cost?

Capt. C:—I have asked for no estimates since 1893. I kept my own figures concerning it and I had my own estimate.

Capt. Gillette:—I made an examination hastily of the first works constructed under those specifications, and I find it enormously expensive. Did you ever make a similar examination?

Capt. C:—Yes sir; as the work went down I have made an almost daily examination, and since it went down I have had my assistant engineer make soundings and report to me if the slightest indication of scour developed.

Capt. Gillette:—Did you have your assistant engineer find whether the mattresses were sinking into the sand or not?

Capt. C:—I did some time ago, not in this contract.

Capt. Gillette:—Did it show that it was or was not?

Capt. C:—That it was going into the sand some.

Capt. Gillette:—Did you have him find out whether the
228 mattress itself was shrinking or not.

Capt. C:—I dont remember whether I did under this contract. I found that the other mattresses had not.

Capt. Gillette:—What do you mean by "subsidence"; you testified that they showed no "subsidence" and that they were standing up.

Capt. C:—I should have said compression.

Capt. Gillette:—They showed no compression?

Capt. C: No compression so far as I know.

Capt. Gillette: You said that your assistant engineer informed you that there was no subsidence, now you wish to change it to compression?

Capt. C: My assistant engineer reported to me that the top of the mattress was about on the same level as when it was sunk, except what went down in the sand.

Capt. Gillette: Was that verbal or written?

Capt. C: Oral. That was not under the present contract. Under the present contract I had inspections made from time to time, and my assistant engineer reported to me. I instructed him to observe carefully whether those mattresses showed the slightest change. I told him not only to sound on the mattress, but to sound on either side.

Capt. Gillette: Who was that man?

229 Capt. C: Marion Twiggs. I may say while I have some confidence in Marion Twiggs, I do not now have the same confidence that I did.

Capt. Gillette: Were you afraid of the teredo at Cumberland sound?

Capt. C: No, because the sand covered it. I would have been afraid of it if the sand had not covered it.

Capt. Gillette: The amount to be expended on the work was enormous?

Capt. C: Yes sir, over two millions to be expended.

Capt. Gillette: The slightest change, the slightest shrinkage would be a question of very great importance in the immense number of yards of jetty to be constructed?

Capt. C: O, yes.

Capt. Gillette: For your own information, and your own protection in future, in case there was something wrong there, should you not have reports from your assistant engineer?

Capt. Carter: Nearly all my reports from my assistant engineers and inspectors have been oral reports, for the rea-

son that I have been personally on the work so much that I felt as if I was an inspector myself. I called them on the deck of my boat, and I relied on their oral statements.

230 Capt. Gillette: Have you ever visited the work at Cumberland sound with the division engineer, Col. Haines?

Capt. C: I think I have.

Capt. Gillette: Did he ever see the mattresses as constructed by the Atlantic Contracting Company?

Capt. C: I presume he must have seen them.

Capt. Gillette: Do you remember whether he saw one being built on the barge at the reservation when Gen. Craighill was here?

Capt. C: I presume he must have seen them, if he was here when the work was being erected.

Capt. Gillette: Do you remember explaining to him whether the mattress he saw on the barge was one mattress or eight, and that you paid for those layers instead of as one mattress?

Capt. C: I dont remember at this date. The mattresses are about eighteen or nineteen inches thick each, whereas this was enormous; he must have known that this was a combination of mattresses.

Col. Gillespie: When was this?

Capt. Gillette: Tha. was under the present contract.

Capt. C: Some time last winter or in the early spring.

Col. Gillespie: Less than a year ago?

Capt. C: Yes sir.

231 Capt. Gillette: The work on the contract began in December 1896? The first brush used on the contract was gotten from the reservation?

Capt. C: I can see very readily by referring to my notes. I kept a memorandum of the work. I dont remember now. I remember of his being down here. All this was as clear to me of course, as the sun shining on a bright day, it was in all my reports, but whether I especially explained the matter to him, or whether he asked me, I dont remember.

Capt. Gillette: Did he know you were paying $1.10 a square yard for each layer?

Capt. C: I suppose he did; that was the contract price. I presume he must have known that we were paying it. The original estimate price is a dollar.

Col. Gillespie: Did you have any conversation with the Division Engineer as to the type you were building, and as to your departure from the specifications in building it?

Capt. C: I dont remember whether I did or not. When he came down we went on the work, and I showed him the work and how it was being done. I explained this fully to him, whether I explained it to him clearly or not I dont know.

Capt. Gillette: What is the most important point in an engineering question?

Capt. C: Its success:

232 Capt. Gillette: Irrespective of cost?

Capt. C: No, but if it is unsuccessful, it is no good. My aim has been here to succeed, and I have.

Capt. Gillette: Have you finished?

Capt. C: I have an average depth of water in Savannah harbor and river of twenty-six feet.

Capt. Gillette: Did you cut off Hutchison island?

Capt. C: No sir.

Capt. Gillette: You spent the money.

Capt. C: Yes sir, I spent that for dredging. I explained that to the Chief of Engineers. There were some buildings, some property acquired over there, for which the man wanted an enormous rental.

Capt. Gillette: Who was the man?

Capt. C: A Man called "Big Smith."

Capt. Gillette: Do you remember what he wanted?

Capt. C: Some large amount on rental, I have forgotten, but I think it was something like $75,000.00. That is all in the official books, I don't remember.

Capt. Gillette: I dont find anything except your bare statement that the government would save $50,000.00, and after a while you thought it would not have to pay any rental.

233 Capt. C: I thought so. I thought they would want that wharf front and would be willing to let the United States cut off the island without those damages. There is a scheme that on Hutchison island shall be the big warehouses of the city of Savannah, and that terminals shall be constructed there by the Middle Ga. & Atlantic road, and I thought that the United States could do the work at a saving of probably $50,000.00, if we waited.

Capt. Gillette: Who were those property owners who wanted so much damages then?

Capt. C: I remember, I think, Smith and Paulsen. I went at it as carefully as I could, and that was my estimate of the cost. I don't remember just who they all were. I am intimately familiar with this district, and have learned a

great deal about it since I came here, and knowing the men and knowing the conditions, I was able to arrive at conclusions, which strangers could not arrive at without a good deal of figuring.

Capt. Gillette: You stated that people were buying up lots there for the purpose of speculation, and you thought that $50,000.00 could be saved. Do you remember anybody who bought up land at that time? I had your principal assistant engineer look it up, and he can't find anything.

234 Capt. C: Possibly that may be a mistake about the buying up of lots, I think that there were improvements being erected there.

Capt. Gillette: You did not mention that in your letter, you simply said "buying up land for speculative purposes." I want to find out who it was that bought that land at that time.

Capt. C: Perhaps there is error in that. I know that, that that was the general opinion, and when I aprpoached those men to find out what the damage would be, I obtained that result, and then by figuring that over, I became convinced that about that sum would be necessary. I may have made a mistake in referring to buying lots instead of the construction of improvements. That, of course, I am not prepared at this date, to say.

At this point the board adjourned until 3:30 P. M.—

235 The board met at 3:30 P. M. Present the same as before.

Col. Gillespie: Capt. Carter, for the years running back from 1896 to 1892, the board has before it a certain number of specifications. You have testified that during those years you have gained a great deal of experience in construction, and that there has been an evolution, but the board fails to see any evolution of your specifications. The specifications are the same for all. Will you give the board evidence as to why the specifications have not been changed, to describe the work as you wished it done?

Capt. C: I want to bring this—I want to demonstrate to the board, and I believe, I can, that it has made no difference in the price of the work; that I can demonstrate to the board, then I want to add this, that I consider the changes—

Col. Gillespie: You are going beyond my question; have you any evidence as to why you made no changes in those specifications?

Capt. C: No. I want to put a few more things to it.

Col. Gillespie: Who wrote those specifications, who
236 wrote them originally?

A I think probably—I don't remember, probably Gen. Gilmore.

Q Gen. Gilmore wrote those specifications of 1896?

A No sir. Those were made by taking the specifications of this work from year to year, and adding to and changing them.

Q They were your own, individual, personal work?

A Yes sir, I did them myself.

Q Those specifications then were written by yourself?

A I am responsible for them.

Q Do you think they express all you wanted to express?

A They express what I thought I wanted to express.

Q (By Major Raymond) In the beginning you had a certain kind of specifications for this kind of work, and then, from time to time, as you made new contracts, new specifications for a new contract, you took the old specifications and changed them in such respects as those new conditions required?

A I only changed them just enough—the way I did it, I took the first specifications, probably there might be some disagreement between my inspectors and the contractors as to the interpretation of the specifications, and I would
237 make a pencil change on the specifications, and when the next specifications came up I would put in that change.

Q Then you must have in the specifications some item, which are survivals of the old specifications and which you did not change?

A Yes sir; the log mattress work.

Q (By Col. Gillespie) The specifications from 1892 to 1896 are your own work?

A They were my own work, to this extent, that when I came here I found a set of specifications which covered the work. I accepted those specifications, my superior officer having made them, until 1888—

Q Was not this work here in the Savannah river, for which you are claiming so much credit, done under a project made by yourself?

A I was ordered to do it. It was my project.

Q Was not the money gotten under estimates that were contained in that project?

A Although it was written by Gen. Gilmore, I was his assistant on the ground.

Q Gen. Gilmore didn't write those specifications?

A When I came here I found a certain type of specifications for a certain work, and I only modified those speci-
238 fications just as I would find difficulty in the execution of the work. If there was a disagreement between the contractors and inspectors, because the specifications were not clear, I made a memorandum of it and tried in the new specifications to avoid it. I continued that down to the present time. I don't know where I got my idea for this type of brush mattress, but I think it was on the St. Johns. When I made those specifications in 1892, I thought it would be the best thing; but I found in the construction of the work, that I had to make changes, and I did that under that clause which gives the United States power to make variations where the cost is not increased. I want to state here now that I supposed that that was always known. I made no concealment of it.

Q (By Col. Gillespie) After 1892 your specifications are written the same way?

A Yes sir, practically so. I thought it was inadvisable to make and change, because the only change I would have made would have been something which I considered would have given one concern the monopoly.

Q The first contract that was made in which any large sum was involved was in 1892?

A Yes sir.

239 The amount involved was large, one million and a half dollars, was it not?

A Three millions and a half.

Q For the Savannah harbor?

A The project I think was for three million five hundred thousand.

Q A very large sum in comparison to what had gone before?

A Yes sir.

Q How did the prices bid compare with those bid before?

A I don't remember, without referring to the bid.

Q The contractor was the Atlantic Contracting Co?

A Yes sir.

Q They have had a number of contracts since?
A Yes sir.
Q It has been stated, in the statement of Capt. Gillette, that all those men who have had those contracts, since 1892, although under different names, are the same individuals. Do you know who constitutes the Atlantic Contracting Company?
A Of my own knowledge, I dont, but I have heard that it consisted of the Gaynors. I dont know. I know it is an
240 incorporated company, because I made them file a certificate of incorporation.
Q The Gaynor Bros?
A I know one is president, another is treasurer and another secretary.
Q Anybody else interested in it?
A I have suspected that Capt. Green had an interest in it, but I am not positive. I know that at one time he had an interest with them, but whether he has an interest yet, I dont know. Then I understand that Mr. A. M. Bangs is interested in it.
Q Did Capt. Green's name appear on the bond at the time of the execution of this contract?
A I dont know. I can tell by referring to it.
Q If his name appeared on the bond, and you knew or suspected him to be a member of the firm, would that have influenced you to call on them for another bondsman?
A If I had known that he was a member of the firm.
Q You say that you suspected it?
A I say that I thought he might have had an interest in the matter, but I didn't know.
Q Have you ever had any private transactions with
241 any of those men who you state belong to this company, which would lead people to suspect in any way that you had something to do with the contract under the government?
A No sir.
Q You had no such private transactions?
A Nothing, except I may have had Capt. Green do little things for me, but they were of a private nature and not business. With the Gaynors I never had any transactions. I have had Capt. Green do some commissions for me. I would write to him to make little purchases for me. I have had nothing which I would not have had the whole world know.
Q You never had any business relations with any of those

gentlemen, Bangs or Green or the Gaynors, that would lead the public to suspect for a moment that you were acting in concert with them in the conduct of the government contract?

A No sir. I remember at one time going down to Florida with Col. Gordon, or for him, about the time of the phosphate discovery in Florida, and Gaynor went down at the same time, and he said "If you find some phosphate, I would like to put some money in it." But we didn't find any phosphate and we didn't put any money in it. I have never been under obligations to them in any way whatever.

242 Q On September 8, 1896, you opened bids for an amount aggregating considerably over three million dollars?

A Yes sir.

Q Under the last specifications?

A Yes sir.

Q For Cumberland Sound and Savannah Harbor?

A Yes sir.

Q Those specifications being practicably the same so far as the requirements were concerned?

A Yes sir.

Q You received three bids at this opening for each contract? Did the smallness of the numbers of the contractors excite any suspicion on your part that contractors did not find sufficient in this contract to justify their bidding?

A No sir. I thought I would have more bidders than that, but after conversation with men who intended to bid, and did not bid, I came to the conclusion that it was the monetary condition of the country that prevented it, in fact, two men told me that that was the reason.

Q Did you suspect that the obscureness of the specifications as to the work to be done under the contracts, was any reason why other bidders did not bid?

243 A No sir, no, that was not the case.

Q Did you at the time the bids were opened, and submitted to the Chief Engineers for approval, think that the prices were reasonable and just, in comparison with the prices of the same work a very short time before?

A I thought they were, otherwise I would not have recommended them.

Q In the contract for the Savannah harbor the price of the mattress was ninety-five cents, in the bids opened September 8, 1896; in September 1892 it was the same price. In

Cumberland sound, in the bids opened September 1896 the price was one dollar ten ($1.10); the previous price, Sept. 29th, 1894, from A. M. Bangs, who you say was presumably a member of the Atlantic Contracting Company, was fifty-seven cents?

A I dont know that he was a member, he may have been associated with them.

Q It was fifty-seven cents in one case and $1.10 in the other, how could you recommend the acceptance of that bid?

A I believed, and I believe yet, that that bid of fifty-seven cents was enormously below cost.

244 Q Is it a question for a government officer to determine whether a contractor can afford to do certain work?

A No sir, but it was this; the estimate that was made up was one dollar per square yard, and this was only ten cents greater, and in view of the conditions, a variation of ten per cent was not too much.

Q Then your theory is that any contractor who bids below the estimate, loses money?

A I should be glad to have them bid below the estimate.

Q Bangs did bid below it?

A I was exceedingly glad to get him to do it.

Q It seems a little curious that you should have accepted a bid nearly twice as great. Did it ever occur to you that you could reject those bids.

A I had a right to reject them, but I didn't feel that it was to the interest of the United States to reject them.

Q In reference to the stone; Bangs bid $2 on the stone. Have you any evidence that he lost money on that?

A No proof.

Q You recommended the acceptance of the Atlantic Contracting Company at $3.50?

245 A Yes sir, I did that for this reason,—I dont know whether that is a matter of record, I think it is—.

Q You stated that Mr. Duval owned stone quarries, and that he intended to bid with a view of opening them, as his road ran to them.

A I dont know that he did open those stone quarries. I said that he determined to bid and that the railroad reached the quarries.

Q With a view to developing the quarries on the line of his road?

A He expected to haul the stone over his road, but as to whether he owned the quarries, I dont know.

Q I gathered from you that he had opened quarries?
A I didn't get that impression, I got the impression that he wanted to transport the stone, I did not necessarily get the impression that he was going to open quarries.
Q Do you know who it was that proposed to open quarries?
A No sir. There were two or three men down there who had quarries on the line of the Savannah, Florida and Western Railway, and on the line or near the line of the Florida, Central and Peninsula Railroad.

246 Q Coming back to the identity of those contractors whether it was Bangs, or whether it was the Atlantic Contracting Company, or whether it was Ely, is it not a fact that they all used the same plant, or the nucleus of the same plant?
A I dont think so. Ely I think, is P. Sanford Ross, these men are entirely different men.
Q Is not the plant now used upon the work, the same that has been used heretofore, with possibly a little extension or repairs?
A The same plant that has been used, with additions, I think it is; that belongs to the Atlantic Contracting Company, I don't know whether Mr. Ely had his plant here. He is P. Sanford Ross.
Q In approving this contract and in its execution, did you feel that you were authorized, did you feel that you had the right to go beyond the amount which was given in the specifications as the approximate amount of work to be done?
A Yes sir.
Q In conversing with bidders, were the approximate quantities mentioned in specifications, given as the amount of material which would be required in the execution of the contract?
A Yes sir.

247 Q In the contract for the Savannah harbor of 1892, you used three hundred and fifty thousand square yards of mattress for canvassing bids, and up to July 30, 1897, you have used 1,363,000 square yards of mattress, nearly four times the amount mentioned in the specifications?
A Yes sir.
Q When you had reached the three hundred and fifty thousand square yards, did you notify the Chief of Engineers?
A No sir.

Q Did you notify him at any time?
A I don't think I have notified him directly.
Q You assumed that the specifications were so elastic, that you could provide any quantity of material, and dispose of it any way you thought fit, provided you didn't exceed the sum appropriated by Congress?
A Provided it was to the interest of the United States, and provided it didn't increase the cost.
Q Is it customary for officers to so far exceed the quantities approved by the Chief of Engineers?
A Yes sir, so far as I understand it.
Q Without specifying the quantities?
A I provided for that in the specifications, as Gen.
248 Gilmore did.
Q I am only asking about your quantities, I am not asking you what Gen. Gilmore did. After you began to exceed the amount called for in the specifications, did you notify the Chief of Engineers of that fact?
A No sir, not that I remember.
Q In the case of Cumberland sound, the amount used for canvassing bids is two hundred thousand square yards, you had, up to July 30, 1897, four hundred and forty-six thousand square yards. After you had completed the placing of 200,000 square yards, did you notify the Chief of Engineers that you had completed it?
A No sir.
Q Did you notify him at any time prior to July 30, 1897 that you had exceeded the specified quantity?
A You mean the quantity used in canvassing bids?
A Yes sir.
A I should like to explain why I did not. You will find in the specifications put in here, I dont know where it is now, that the quantities are liable to increase or decrease, absolutely or relatively, as may be necessary, and I considered that the local engineer was given authority to do that in all cases where he thought it necessary.
Q Authority to spend money on a specific project pre-
249 sented by you to Congress?
A Yes sir.
Q That is your guide, and not the specific approval of the Chief of Engineers on the project presented?
A Yes sir, I understood by that—
Q It is not safe, at least, to go beyond it?

A I always understood and acted the other way.
Q What do you mean by that?
A I always used whatever quantities I thought necessary without reporting it to the Chief of Engineers. I never understood that it was necessary. It never occurred to me that it was necessary.
Q You felt that so long as you kept within the appropriation, you could go ahead and do what you chose?
A So long as I kept within the appropriation and did what was to the manifest interest of the United States, without injuring anybody.
Q (By Major Raymond) Did you not make monthly reports of the progress of the work?
A Yes sir.
Q In your monthly reports you always stated the quantity of mattress work that you had done up to that time?
A Yes sir.
Q That you had done during the past month?
A Yes sir.
Q You reported to the Chief Engineer monthly?
A Yes sir, I had to make a specific report, and my reports always told what the inspectors and engineers were doing.
Q Your reports always stated the quantity?
A Yes sir.
Q Did that go through the Division Engineer?
A Yes sir.
Q I would like to ask you a question, I inferred from something you said, that this mode of extending the work in regard to quantities, without the approval of the Chief of Engineers, was in existence before you took charge
A Yes sir.
Q That was done by Gen. Gilmore before your time?
A Yes sir.
Q You followed that practice?
A Yes sir. The only experience I had was in this district. That contains the number of yards of mattress. (referring to report handed him by Capt. Gillette) This was sent to the Chief of Engineers and my Division Engineer.
251 Q (By Capt. Gillette) There is $308.00 one month, and then the month following $345,000.00?
A That happened in this way; there was only $5,000.00 appropriated when the project was made, and the contractor had to do his work without his money being appropriated. When Sundry Civil Bill was passed it appropriated $350,000.00

and I took it up and paid the contractor what I could afford to pay. I think that must have been the way of it.

Q (By Major Raymond) Those kinds of mattresses which are specified in your specification, were they the same that were specified in previous specifications, before you took charge of the work?

A What kind?

Q Those three.

A Yes sir.

Q When they were built under those former contracts, were they built similar to what you built them?

A Yes sir.

Q In your opinion, is there any variation between the mattresses as built under your direction, and the mattresses built under previous officers, and under similar specifications?

A The instructions which I always received were that
252 the specifications should be made, and the project also, as elastic as possible in order that the engineer's hands should not be tied, in order that he might be able to accomplish the results he desired to attain. It was the intention, and I believe it to be right, that they should be as elastic as possible, so that any modification which would work no injury and save money to the United States could be adopted without formal change. In other words, when the project was approved it carried with it authority for doing that. I think in the project the details are left to the engineer in local charge. I have forgotten the exact verbiage.

Q You said this morning in your testimony that the reason why you had asked for a single bid for those three designs, was that you wanted to avoid supplemental contracts. What was there about a supplementary contract that you wanted to avoid?

A Nothing, except the correspondence and the clerical labor.

Q It is only Twenty-four hours to Washington?

A It was simply a method I adopted.

Q Do you think it a good method?

A If I had not, I would not have used it.

253 Q Is it the spirit of the specifications (?) that the supplementary contract is to cover those very changes or departures from the specifications upon which the contract is based?

A Only in case it varies materially the cost; the specifica-

tions state that then a supplementary contract shall be entered into.

Q The statement here is that the cost has been increased?

A That is not true. The cost has been enormously diminished.

Q You have nothing to combat that?

A I shall get something. That is not true, that is the very reason why I increased the quantities of mattress—because as I explained—

Q To make it cheaper?

A Yes sir, because, as I stated, those mattresses would have gone down clear out of sight. If I had put that amount of stone on them, I would have never gotten further than Fort Pulaski.

Q Do you think it equitable to disappointed contractors that you should have liberty to change the amounts of material delivered under that contract?

254 A Yes, provided it does not modify the cost of the work. If brick or stone were specified and I used wood, that would be an entirely different thing. It seems to me that when the nature of the material is not modified and the cost is not increased, and the United States gains enormously by it, that it is perfectly fair. If I had not thought so I would not have done it.

Q That was an enormous change from three hundred thousand square yards to thirteen hundred thousand square yards?

A I reported it month by month. Of course, I made no distinct report. I didn't think it was necessary. It was always my desire to have my superior officers know exactly what was being done, in fact, I had the fullest confidence that they did know.

Capt. Carter: I desire to make one more statement and that is this;—I have had all my experience right here in this district, and I know the conditions of this coast and this harbor, and I know that if I had done otherwise than as I did, it would have been detrimental to the interests of the United States and the work, and that being the case I conceived it to be my duty to do what was right, and I think that I would have been very negligent if I had not

255 done so. About the supplementary contract; that question came up in my mind, because the contractor complained that the work was costing him more than I was giving him for certain work, but I persuaded him to go ahead and

do it. I said to him, "You have an interest in this work as well as the United States, and you have your reputation," and he would go ahead and do the work.

Q (By Major Adams) You say that you persuaded them to do it?

A I said to them, "You are a large contracting firm and you want the work done creditably, and if the work on this harbor is successful, it will be to your credit just as it will be to the credit of the United States, if you can devise any means to carry this on without pecuniary loss" and in that way I induced the contractor to do it.

256 Q Have you ever carried on any correspondence with with the individual members of The Atlantic Contracting Company, have you received any personal or private letters from the individual members of this contracting company?

A Yes sir,—not private, but personal letters. I think I have received them from other contractors.

Q Did you file them in the official records?

A Not if they were personal letters, I didnt file them in the official records.

Q In making payments for work done by the Atlantic Contracting Company, who received the checks?

A I dont remember at this date. In one case I remember that I gave it to the President of the Company in New York; the Secretary of War had ordered me to go with him to Sandy Hook.

Q Will you please give names?

A Mr. John F. Gaynor—it may have been his brother, Mr. William T. Gaynor, as I remember it gave it to John F. Gaynor.

Q State to whom you have delivered checks, mentioning all the names, for the Atlantic Contracting Company?

A There were only three men William T. Gaynor, E. H. Gaynor and John F. Gaynor.

Q You are positive about that?

A I feel positive, I dont know as I remember it now.

Q Have you ever received letters calling for checks?

A Yes sir.

257 Q From whom?

A I received them from them.

Q From whom?

Q From John F. Gaynor and E. H. Gaynor—I dont know, I cant remember.

Q From anyone else?

A I may have received them from Captain Green.
Q Did you ever deliver any checks to Captain Green?
A Not that I remember, I dont think that I ever have.
Q When you have made a payment, have you made it by single check, or by more than one check?
A By as many as they desired.
Q How was that determined.
A By their request.
Q What was your reason for drawing more than one check in payment of a single voucher?
A Because I always made it a rule to draw as many checks as the contractors wanted.
Q What is the greatest number you have ever drawn in payment of a single voucher?
A I dont remember, the checks themselves will show; I remember drawing a large number.
Q How many?
A Perhaps twelve or fifteen.
Q All drawn on the same date?
A I dont remember; the records will show that; they
258 may have not been drawn on the same date; that would depend on whether or not I had funds available.
Q When you make up a voucher, you would have the voucher receipted in full on the date of payment, would you not?
A The Chief Clerk fills in the date of payment when the checks are drawn.
Q Filling in that date, would you draw checks on different dates in payment of that voucher?
A It ought not to be, if so there is an error in filling in the date.
Q Coming back to the question of the delivery of checks, I understood you to say that you may have received letters demanding checks from Captain B. D. Green?
A I remember that he has either spoken to me or written to me, I dont know which.
Q Have you ever received any letter from W. W. Hegeman calling for checks, or for payment?
A For the Atlantic Contracting Company—not that I remember of. I remember Mr. Hegeman, but I dont remember of his having any conection with the Atlantic Contracting Company.
Q Have you ever received a letter or telegram from W. W. Hegeman?

A That I dont remember. I have met Mr. Hegeman. I knew Mr. Hegeman years ago, in 1891 or 1892, when he was connected with the East River Tunnel.

Q Where is his office; in New York?

A I really dont know.

259 Q Is he anyway associated with The Atlantic Contracting Company or the individual members of that company?

A I think that they contemplated at one time hiring him as an engineer for some pressing work that they were doing. In fact I think that it was through Captain Green that I met Mr. Hegeman, but I dont remember.

Q Have you had any business relations with the Gaynors, Mr. Hughes, Captain Green or Mr. Hegeman?

A No sir, I have never had any business relations with them.

A Are you sure about that?

A I am sure of it to this extent, I may have had some correspondence with Mr. Hegeman, because he wrote to me, or I saw him, I feel absolutely sure.

Q You have had no business relations with any one of them?

A No. I contemplated at one time having some business relations with Mr. Hegeman; I also contemplated having some business relations with A. M. Newton, but no money that I remember has ever passed between Mr. Hegeman, or Mr. Newton, or between any member of The Atlantic Contracting Company, Hughes, Bangs, Gaynor, Green and myself.

Q You say that no money has passed between you and Captain B. D. Green?

A None except this, I sent him small checks, when I wanted him to do something for me, and he sometimes sent me the balances of those checks.

260 Q You said sometime ago that you were under no obligations to any member of this firm, The Atlantic Contracting Company. I wish you would think of that and tell me whether it is strictly true?

A That is strictly true.

Q Have you ever borrowed money from any man associted with that company, or acting as agent of that company?

A I borrowed morey at one time $1600.00 from Captain Green and I repaid that to him. That was a private loan and I repeaid him with interest, I paid him principal and in-

terest. If I can look through my own records I can find it, because it was a mortgage on—

Q Do you know anything about the organization of The Empire Construction Company?

A Yes sir.

Q Who is president of that Company?

A I think that Captain Green is.

Q Have you any interest in anyway in that company?

A No sir. I talked it over with them, but I had no interest in the matter.

Q Have you any records of the company in your possession?

A I think I have.

Q How did that come about?

A The stock book of the company was left here by Captain Green or Mr. Gaynor.

Q Why did they leave it here?

A I dont know why it was left—I believe, I think 261 that it has been there a long, long time, several years.

Captain Gillette: No sir, there is nothing in that desk.

Q (By Major Adams) Have you ever received any letters from any of the officers of this Construction Company?

A The Empire Construction Company?

Q Yes?

A I dont remember; they had some contract, and I have discussed matters with them, but whether I have had any correspondence with them, I dont know.

Q Who were the stockholders of The Empire Construction Company?

A That I dont know whether I can tell you.

Q Can you tell us the names of any of them?

A I know that Captain Green was a stockholder in the Empire Construction Company.

Q Either of the Gaynors?

A I think so, I am not sure. The stockbook was left on my desk here, and I dont know whether I looked over it or not. I know that I heard them talking of the organization of the Company. I think a man, a lawyer by the name of Chandler, in New York organized it, I am not sure, but I can find that out by writing Captain Green, who may have the records of it.

Q Generally speaking, the men associated with the Gaynors, Captain Green and Mr. Hughes are the same men that are connected with the other construction Company?

262 A As I understand it, the Empire Construction as an organization is non-existent. I dont know anything about the details of the business, I only know that they talked of organizing it for the purpose of building the Adirondack railroad.

Q Were you in anyway interested in that work, or in that company?

A Not personally, I mean that I had no pecuniary interest my interest in it was only on account of my friendship for Captain Green, and my acquaintance with the members of the firm.

Q Did you take any steps to further the interests of this construction company?

A I dont remember whether I did or not. I remember seeing Mr. Vanderbilt once and speaking to him, but whether it was in the interest of the company or not, I dont know, I dont remember.

Q Has Mr. R. F. Westcott any interest in the affairs of The Empire Construction Company?

A No pecuniary interest that I now anything of.

Q Did he take any measures to further the interests of this Company?

A None that I know of, except this, knowing them, and he being an influential resident of Orange, N. J., they asked me to introduce them to him, as they wanted to meet some people in Orange; whether they met them through him or not, I dont know.

Q You have stated that you had an account as attorney for R. F. Westcott?

A That is true.

263 Q Acting as attorney for him you have an account in The Union Trust Company, New York?

A Yes sir.

Q Had you any personal interest in that account?

A None except what he chose to allow me; I took want I wanted out of that.

Q Did you deposit your own funds in that account?

A That I dont remember, but the account will show.

Q Did you deposit checks drawn for mileage in that account checks drawn to your order?

A Very likely I did.

Q Did you deposit checks for your pay?

A I deposited anything I had in that account just the same as I did in mine.

Q Did you draw on that account checks for your personal expenses?

A Yes sir.

Q Did you draw checks to pay your club bills?

A Yes sir.

Q Did you draw checks payable to the order of your relatives?

A Yes sir.

Q How many of them?

A Any of them I wanted, anything Mr. Westcott allowed me to give.

264 Q I thought you were acting as attorney for Mr. Westcott?

A Yes sir.

Q Had you at the same time an account in your own name in The Union Trust Company?

A Yes sir.

Q Did Mr. Westcott draw checks from this account, the one in your name, in which you were acting as attorney?

A I had two powers of attorney, do you mean the bank power of attorney?

Q Both?

A I dont remember now; the bank power of attorney simply gave me power to sign his name to checks, and he gave me another power to transact his business generally, whether he drew his own checks—I dont think he did draw any of his own checks during that time, I believe he did draw one?

Q Did you draw checks to his order from time to time?

A Yes sir.

Q For what purpose?

A I think it was—I dont know what the purpose was, I must have drawn a check on Brown Brothers, and I think same small checks.

Q You draw checks to his order to make investments for yourself?

265 A No sir, not as distinguished from him. What I mean is this, I drew his checks to make investments for him, not to make investments for myself, because I dont know that I had my own funds there.

A It is in evidence that you had your own funds there?

A I didnt make any distinction between his funds and mine, except by a little pencil memoranda; if I remember right I used to note whether whether they were for rentals

of his, I used a certain figure in checking, or something of that kind; then in his general bank account, if I made an investment I had another check, whatever I did for him I put down under the head that I was responsible for, and the personal things that he was responsible for I put down under another head, the head that he was responsible for; the personal things that went to him I also put under the head that he was responsible for?

A In this account as attorney for Mr. Westcott, why did you deposit in it your own funds?

A I dont know. It might have been because Mr. Westcott had for some years back treated my affairs and his as the same.

Q Still, you say that at the same time you had an account in your own name?

A I had.

Q Why didnt you deposit your personal checks in your own name, instead of his?

A I dont know why it was, except this, he opened a bank account for me first in 1890, or 1891, when I went down
266 to Roanoke; I went down there to attend to some business on account of his son in law; from that on I had an account in my own name in the Union Trust Company, New York, and I have it now.

Q Are you still acting as Mr. Westcott's agent?

A I didn't draw checks in his name since his return from Europe; I only drew those during his absence.

Q Is that account in his name, O. M. Carter attorney?

A No sir, it is his account.

Q Did you ever draw a check transferring the balance to him?

A To his order?

Q Yes?

A Yes sir.

Q So it is closed so far as you are concerned?

A So far as I am concerned, I dont think I have used it since.

Q Is it ended?

A I dont think that it is ended; it is in his safe deposit box—I dont know, I dont remember; the only object of it was this—

Q At the time that you were acting as attorney for Mr. Westcott, at the time that you had this account in The Union

Trust Company as Attorney, did you make any large investments for him?

A I did.

Q Did you make any for yourself?

267 A No, I did not. I think I made some in my name, stock for facility of transfer, but none of it was mine.

Q Do you hold that stock now?

A No, I gave it back to him as soon as he got back from Europe.

Q Did you receive the dividends on that stock?

A On one he received dividends, the other one I think he sold; sometimes he received them and sometimes I did.

Q Did it stand in his name, or in your name?

A I dont know exactly yhat he had transferred on the books of the company.

Q How was that dividend collected?

A By check.

Q Did those dividends go to his credit in the Union Trust Company, or to yours?

A Unless he has had it transfered on the books of the company, they go to mine.

Q Do you know whether it goes to your credit, or to his?

A It did go to my credit until I went to Europe. I transferred everything over to him when I went away, because I was then no longer abole to take care of his things; when

268 I went away I gave up everything to him; whether he went down and had the account changed or not, I dont know, but The Union Trust Company will know.

Q Has Mr. Westcott made any investments for you?

A I never had anything to make any; I didnt have much of my own; he has given me some property, which I have and he has made those investments for me.

Q While you were acting as attorney for Mr. Westcott, while you held this account in his name, what amount of money of your own did you deposit in that account?

A I really dont know.

Q What do you think?

A They appeared to me to be very large sums—let me see how long was he absent?

Q I am not under examination?

A I beg your pardon. I dont remember. I have had his affairs for some time to look after, I dont remember just when. Sometimes I would deposit my money here in this bank; sometimes I would deposit it in New York, sometimes

I would deposit in the account standing in my name, and sometimes in the account standing in his name.

Q Tell us why you did that; having two accounts in The Union Trust Company, one in the name of R. F. Westcott
269 and the other in your own name, when you came to deposit your own money, why did you deposit it to his credit?

A I dont remember how I did it, except that the other was his also; it didnt make any difference in which account I deposited it, whether I put it in the account in my name, or in the account in his name; when he was here in this country, I presume that I deposited it in my own name.

Q Did you make any remittances to The Union Trust Company from Savannah during that time?

A Yes sir.

Q Large amounts?

A No, I dont think so; I dont remember. There were some mortgages that he had here that were large.

Q Who made those investments for Mr. Westcott?

A I did.

Q What amounts?

A There was, I think $15,000.00, I think $35,000.00.

Q Did Mr. Westcott deposit that money to his own credit in the Union Trust Company for that purpose, deposit $35,-000.00 to his own credit for that purpose?

A I dont know whether it was all there I dont know whether I drew checks as his attorney, or whether he
270 drew them; I dont remember when the investments were made, I simply know that he holds those three mortgages here, four mortgages, one in South Carolina and three in Georgia.

Q Where did that $35,000.00 come from?

A I dont remember. It came from his account as I remember. I dont remember whether it was drawn out of that account, or drawn out of the other account; I think the check books will show that.

Q You say that you remitted money by mail from Savannah to the credit of Mr. Westcott?

A Sometimes to his credit and sometimes to mine.

Q Where did you get that money?

A It came sometimes from checks from his collector in New York, sometimes from dividends—I dont remember how it came.

Q What was the name of that collector?

A It was his son-in-law's father?
Q What is his name?
A Mr. Solly.
Q Did he ever make deposits in New York himself personally?
A Yes sir.
271 Q Did he ever remit money from New York to you?
A I dont remember whether he did or not; I know that he has made deposits.
Q Do you know any reason why he acting as collector in New York, and making deposits in The Union Trust Company in New York, remitted money to you to be sent back to New York? If he deposited one check, could he not deposit another?
A There were checks drawn in my name, and there were checks drawn in Mr. Westcott's name; if a check was drawn in my name he could not deposit it, if it was drawn in Mr. Westcott's name, I think he could. I dont know that that there is any reason, other than that.
Q He did then make deposits to the credit of Mr. Westcott himself?
A That I wont be sure about; I think he did. I am not sure about that.
Q Did you make any investments in New York at that time when you held that account in Mr. Westcott's name?
A You mean make any purchases?
Q Make any investments?
A I think that I did.
272 Q Who was your agent in making those investments?
A Two or three. I think the main brokers were Reed & Flagler, Charles Vandeventer and Watson & Gibson —the most of it was through an old gentleman by the name of Reed.
Q What amount of money belonging to Mr. Westcott do you now hold in your own name?
A I dont know how much I do hold in my own name—I am not quite sure, but I think about $45,000.00.
Q What amount does Wr. Westcott hold belonging to you?
A He dont hold anything belonging to me—I may state here, of course what I own is his.
Q (By Col. Gillespie) Was Mr. Westcott in this country at the time that power of attorney was given?
A He gave it to me before he left.

Q He was expecting to leave this country?
A Yes sir.
Q Did that power of attorney exist during his entire absence?
A Yes sir.
Q What year was this?
A I think that he went away in 1894 and came back
273 in 1896.
Q Was this power of Attorney, then issued in 1894?
A Of that I am not sure. They are both in existence yet.
Q You say that he issued that power of attorney when he was going away?
A I dont remember whether he issued it just at the time or not; it must have been issued while he was here.
Q In expectancy of his going away?
A That I cant be sure of; I know that the power of attorney to the bank was issued in expectancy of his going away, as to the other power of attorney, I dont know.
Q Did the bank power of attorney expire when he returned?
A Not necessarily, as I understand it. Whether it has been revoked or not, I dont' know.
Q Did you exercise it after he returned?
A I dont believe I did.
Q Is Mr. Westcott an infirm man, incapable of taking charge of his busines?
A No sir, he simply did it through love for me.
Q Was it easier for him to have his business transacted by you in Savannah, a busy man, rather than have it
274 transacted by himself in New York.
Q I would very often be with him in New York. He wanted me to resign and go into The Westcott Express Company. He wanted to give me business experience.
Q Was he an active man in The Westcott Express Company?
A He is not now, and I dont think he has been for sometime; I think his son is.
Q Is Mr. Westcott a large stockholder in that line?
A Of that I am not sure.
Q Could you, conveniently to him, transact business in Savannah that ought to be transacted in New York, which would need a power of attorney, would it be convenient for

him, being in New York, to give a power of attorney to you living in Savannah?

A If he wanted anything done that was in New York why he could do it himself?

Q Then it is a power of attorney that began many years ago, and has not expired and you continue to act under it?

A I dont remember the last thing that I did under that power of attorney.

Q Would you be legally justified in using it now?

275 A I dont know whether that power has expired. I would not feel justified in doing it without communicating with him. I have not had occasion to use it, and I dont know whether it has expired or not.

Q Then it is a power of attorney, you say, that is in the safety deposit box in New York?

A Yes sir.

Q It can be made active at any time he sees fit?

A As far as I know. I have not used the power for sometime, and I have not looked at it, I have forgotten the last time I looked at it; I dont remember when it was.

Q Have you had a power of attorney for any other person?

A Yes sir.

Q For whom?

A For my mother.

Q Is your mother living now?

A Yes sir.

Q Have you charge of the estate?

A Unfortunately there is not very much estate; I have charge of what there is, yes sir.

Q Are you trustee for the estate?

276 A My mother has no estate at all. I take care of her the best I can.

Q (By Major Raymond) Mr. Westcott may have cancelled that power of attorney without your knowing anything about it?

A Yes sir.

A That is the reason that you are uncertain?

A Yes sir, that is all. I know that he gave me that power of attorney, so that if anything came up I could attend to it without troubling him. Mr. Westcott gave me that power of attorney so that I could have it for that purpose.

Q (By Col. Gillespie) You stated in your testimony that

you had transferred those securities to Mr. Westcott; what kind of securities were they, stocks or bonds?

A Both.

Q Is it probable that company would send you the dividends after you had transferred the stock?

A Oh no, not if it had been transferred on the books of the company.

Q What is the latest dividend you have any knowledge of having received?

A I think it was—I dont remember—I cant tell you, 277 I think it was last April.

Q If the money was placed in your name, would you not remember what dividends came in?

A When I wanted any money, I just drew myself a check for it and took it?

Q On Mr. Westcott's account?

A On this account, the one that is in my name.

Q In the Union Trust Company?

A Yes sir. I have made no distinction between the two accounts, except by memoranda. I never did anything without consulting with him, I was a young man and I never did anything without consulting some older man; then I would go over with him what I had done. Sometimes he was satisfied, and sometimes he was dissatisfied. Whenever I wanted money I drew it out of my own account, which is his, or out of his own account.

Q Do you know whether those bonds were registered bonds, or common bonds?

A I think that they were all common bonds.

Q Then they did not need to be transferred?

A No sir.

Q Would the company that issued those bonds know 278 that you were the owner of them?

A They would not know whether I presented the coupons or not.

Q The coupons are like bank notes?

A Yes sir. They are always kept in his safe deposit vault.

Q Then anyone who got hold of those coupons could cash them?

A Oh yes sir.

Q Now as I understand you, you dont own those bonds and you have not got them in your possession?

A I never had them in my possession, except in this way,

that Mr. Westcott had a safe deposit box, to which I had access.

Q Then when you bought coupon bonds, you went to his safe deposit box and deposited them there?

A Yes sir.

Q Have you access to that box now?

A Yes sir.

Q Can you go there as freely as Mr. Westcott himself?

A Yes sir, I always have. I also have one of my own in which I have a few little things of my own.

Q From what source does the money accrue from which you make investments for yourself, personally?

279 A Well, I have not made any of those for myself. I could have made them by his advice, or with his permission.

Q Have you ever advised or counselled with Mr. Westcott in making those purchases?

A In nearly all. I would not feel justified in doing otherwise.

Q You said that sometimes he was satisfied and sometimes he was not?

A That was when he was in Europe. I did one or two things that turned out very well and he was pleased, and with other things he was not pleased.

Q Then you did make purchases without his advice?

A Yes sir. I took the advice of others?

Q You made purchases without communication with him?

A Yes sir.

Q (By Major Adams) Explain how, why having two accounts there, you deposited your own personal checks in Mr. Westcott's account?

A For this reason, simply; they were both Mr. Westcott's accounts. The money that he gave me to open this first account was his, and everything that I have put in there, except my mileage, and things like that that I had myself. Both accounts were his.

280 Q If Mr. Westcott wanted to draw his check wanted to invest say $2,000, he could draw his own check against his own account to make such investment?

A I think while I had that power of attorney—I know the question was discussed as to whether we had better have two accounts, he said to the Bank, "This is my son in law", and they said, "It will confuse us, you had better one in his name and one in yours.

Q During the time that you acted for him, did he draw his own checks on his own account?

A I think he drew one check while he was in Europe; the bank showed it to me; it was written on a little piece of hotel paper in Glasgow.

Q Was there more than one check of that kind?

A I dont remember; that was the only one that impressed itself on me.

Q If he drew that check and the check was cashed, and he wanted to invest $2,000.00 could be have drawn a check?

A He could do it, but he would not know what balance he had in there; he might draw a check for $2,000 and there might not be money there to meet it.

Q Were any of the bank statements given to him?

281 A Not at the time I had the power of attorney they did not go to him.

Q Since he returned from Europe?

A The one that stands in my name would not go to him; I am responsible to him for that bank statement, the other one would be given to him.

Q Did you ever draw checks to the order of R. F. Westcott?

A I suppose I may have.

Q Did you ever draw one for the purpose of having him make an investment of the proceeds?

A I don't remember that.

Q Suppose that you did, then was it to enable him to make an investment for you or for himself?

A It could have been for himself, because I have had nothing, except what he has allowed me to have. I dont remember whether I did that. The books ought to show that, but I dont remember.

Q Have you drawn any checks for the purpose of making investments, after Mr. Westcott's return to New York, on The Union Trust Company?

A Do you mean in his name, or in my name?

Q In your own name or a broker's name?

282 A I dont remember whether I did or not, but I suppose, I imagine that I did.

Q (By Col. Gillespie) What time did Mr. Westcott return from Europe?

A In 1896, I think.

Q (By Major Adams) When did he go to Europe?

A In 1894, I think, I am not sure about that.

Q Has he been absent in Europe more than once since he opened that account for you?

A Yes sir, I think he has, I think he has been two or three times there; I don't remember about that right now, of course I can refresh my memory—yes, I know he was in Europe again, when I was there in 1895.

Q Can you tell me the total amount of money you remitted, either in cash, or by check from Savannah to New York, for deposit in the Union Trust Company?

A That I sent from here to The Union Trust Company? No, I dont know; there were some dividends that I sent from here, I mean some mortgages, some interest that I sent; I could not tell you, I don't know.

Q Can you tell the amount of the total investments made by you, for yourself, or Mr. Westcott?

283 A No, I don't remember. I remember making some quite large investments; they seemed large to me; I don't remember what was the total.

Q Will you state the source from which you received the money which you remitted to The Union Trust Company and deposited in Mr. Westcott's name, I mean which you remitted from here, from Savannah?

A The only source that I could have received it from the towboat company, Cunningham,—I dont remember—I think only from the Towboat Company, Lyons and Cunningham, or Gordon.

Q What amount do you think?

A I don't know; not very much.

Q As much as a thousand dollars?

A I think more than a thousand dollars.

Q As much as $5,000?

A I could not tell you, I dont remember.

Q Did you ever remit for deposit to his credit as much as $7,000.00?

A I dont remember.

Q What is the largest deposit you ever made in his name?

A In New York?

Q Yes?

284 Q Yes?

A I dont know; I made some pretty large deposits; I don't remember; they seemed to me to be large.

Q Where did you get the money?

A The checks, or the cash?

Q What was the largest one you made in cash?

A The largest I made in cash I got from his safe deposit box.

Q Had you a deposit in the box yourself?

A No sir. I never put anything in Mr. Westcott's box, except the proceeds of what I took out of the box. He had—

Q Did Mr. Westcott usually keep as much as $10,000.00 in his safe deposit box?

A Yes sir, he used to keep a great deal of money there at that time, I suppose ten or twenty times as much as that, in gold certificates.

Q And had the account in the Trust Company at the same time?

A Yes sir.

Q The Board would be glad to have you go on and state anything you may wish?

285 A Of course, there may be some things here that you may not understand. It was Mr. Westcott's habit, I dont know how long ago to keep a large sum of money in legal tenders, or gold certificates, as a method of investment, in that safety deposit box, and he does that yet, and when I became better acquainted with him and knew him better, and got anxious to be a business man, as I thought, and wanted to make investments, and from time to time, after consultation with him I did make them, and sometimes I would make them and sometimes he would. During his absence in Europe I made some of them. About that time there was considerable fluctuation in the value of currency, and in one instance that has impressed itself upon me firmly, because I remember taking the money down and getting about three per cent for it, and then buying some of those bonds which came out.

Q United States bonds?

A Yes sir. That was one of things that he was very much pleased with. Then, of course, I made other investments which were not so good. Those bank accounts I had probably better explain to you, so that you may understand them and how they came about. As I stated, when I went to Roanoke the first deposit was made; I dont remember how

286 much, I think five or ten thousand dollars, and being his money the credit on the balance was allowed two per cent, when general depositors didnt get that much, on account of his having an account there for a long time. For a long time I had a small account, until he knew me better, and became fonder of me, and I transacted more and more of his business,

still in this account. This was kept up until he went to Europe, when it was transacted in his name by me; then when he came back it was in my name. That was continued until I went to Europe. I still had that account and some property put aside, so that I might have enough income, in addition to my pay, to live properly, and then the rest of it he took back. I think that this explanation of the private accounts of Mr. Westcott will probably seem better from him may be, than from myself. Of course, I want to give you all these confidences between Mr. Westcott and myself, as the Board desires it, I shall be very glad to give every single thing that I can. Anything that I dont give you is because I have forgotten it.

Q (By Major Adams) Can you show the Board press copies of your letters? transmitting funds to New York?

A I think I can.

Q Will you do it?

287 A With pleasure.

Q Did you ever have copies of such letters?

A I think so.

Q When can you let the Board have them?

A I think that the Board has them.

Major Adams: I have not seen them.

Captain Carter: I should be very glad to have you see them.

Q (By Major Adams) I find that a deposit was made on February 10, 1893; can you show us the letter transmitting it?

A (Witness refers to letter book). I dont find it here.

Q There was a deposit made January 3, 1893?

A "Inclosed herewith check for deposit, Garfield National $300.00."

Q The one I refer to is for $3,550?

A What is the date of that?

Q January 3, 1893?

A I dont see that. I dont know that press copies were made of all my letters.

Q There was a deposit made on April 14, 1893?

A I dont's find that.

288 Q February 10, 1893?

A I dont find it.

March 7, 1893?

A I dont find that either.

Q June 18, 1894?

A $3,700, that is here.

Q No, $1,350?

A I dont find that.

Q Can you tell us the source from which that money was derived?

A I can find that out for you from the bank; they keep a record of it. I dont remember now.

Col. Gillespie: Not the record that he asks you for?

A If I could get hold of it—I can get from the bank the dates and amounts, and then probably find out how they were derived; I dont remember. I attempted to have press copies of all my letters made, but of course, I dont know why I did not. There is another book, may be they are in that. May be we can find it in the letters received, acknowledging receipt. They always acknowledged receipt of anything that I sent. (The witness refers to letter files). I dont find any acknowledgments of receipt.

289 Col. Gillespie: The Board will give Captain Carter an opportunity to submit that information.

Capt. Carter: I can get them from the bank. They must keep them.

Col. Gillespie: The Board desires the information submitted to it as early as possible. I must say right here that when the Board adjourns here it will meet in New York, and you will be required to come there. That is the place.

Capt. Carter: I shall be very glad to do it.

Major Adams: Are there any letters in these files received from any of the contractors for government work in this district?

A I can tell in a moment. I dont remember whether there are or not. I can look over them.

Q Have you had any correspondence with Captain Green in regard to the purchase of material?

A I think I have; I think he wrote me about some brush (?), there was a company which held some land in South Carolina on which there was brush; I think he wrote to me to know about that; I am not sure about that.

Q Have you had any correspondence with Captain Green as to the purchase of stone?

290 A Of that I am not sure. We talked it over, but I dont know whether we had any correspondence about that or not.

Q Have you had any correspondence with either member of the Gaynor family in regard to any contract work, other than the work for the United States?

A I think that I have.

Q Coming back to the first question as to whether you had any business relations with any one of the men interested in the Atlantic Contracting Company, let me ask you again whether you had any business relations with any one of them?

A No, I have not had. I have had this, I have corresponded with them concerning material, and concerning projects and one thing and another.

Q Personal?

A Personal letter? Yes sir.

Q Have you been associated with them in business enterprises?

A No sir, I have not. By that I mean this, I have had no actual business relations with them. I have known them very well and talked over many things with them, and I have written them about things, I remember one case in Barbadoes, advising them about that matter and looking over it.

291 Q Have you had any interest with in constructing anything in the State of Ohio?

A No sir. I went out with them once. The Pennsylvania road had a piece of terminal property in Cincinnati, and I went to look at that with a foreman by the name of McNeill, but nothing whatever was done about it.

Q Do you consider that you could properly have even that business relation with those men, and at the same time look after the interests of the United States, they being large contractors in this district?

A Yes sir, I felt that I could, because nothing passed between us in anyway that put me under obligations to them.

Q Have you ever drawn any checks on The Union Trust Company in favor of B. D. Green?

A Yes sir.

Q Have you had any business relations with him?

A I dont call them business relations. I drew checks in his favor to give a woman, and he sent me the balances. I asked him to do that because it was something that I did not want Mr. Westcott to know about.

Q Have any of your agents at any time received money form any of those contractors, or men interested with them?

A Any of my agents?

292 Q Yes sir.

A No sir.

Q Has Mr. Westcott ever acted as agent for you?

A No sir, I dont know that I could say that. He has asked as his own agent for me, but he has never acted as my agent.

Q When in your records you enter a deposit, "Received from R. F. W", what does it mean?

A It means that it came from Mr. Westcott.

Q It is a deposit?

A If I received it from Mr. Westcott—

Q Was it a gift to you?

A No sir. It was this, I transacted a great deal of his business, and when I took anything belonging to him, either in cash, or in bonds, or in stock and put it into the trust company, I did it for this reason, that I wanted it down here to draw checks against—it was to avoid a trip to New York.

Q I dont understand your answer, exactly. Suppose that there is an entry under a certain date "Received from R. F. W", opposite a certain deposit in The Union Trust Company, what would that mean?

293 A It mean that there was a deposit put in The Union Trust Company of what had received from Mr. Westcott. What I mean is this, here is an account in the Union Trust Company which is Mr. Westcott's—

Q Did you make those deposits?

A Yes sir, I did, and sometimes he did.

Q Where did the money come from that he deposited?

A It was his, it came from himself.

Q Will you explain why a business man like Mr. Westcott, in New York, making deposits in the Union Trust Company of his own money, should make them in your name, rather than in his own name?

A It was in order that I should have an account that I might transact business for him.

Q Did he add and add to that account until it amounted to as much as, say $40,000.00?

A That account in The Union Trust Company, very likely. I dont know whether he put that in, I think that as a rule that I put it in from his funds when he was not in town, although he may have put it in for me when I was down here, so that I could draw.

Q Suppose the deposit amounted to as much as $30,000, made in your account, did he continue to add to it, in or-
294 der that you might have an account to draw on for your personal expenses?

A No sir, I say it was done—this account was put in my

name in the Union Trust Company, and when I wanted to make an investment, very often I made them by correspondence with his brokers, I could draw a check against it in New York.

Q Do you mean to say that Mr. Westcott made deposits of his own money, (and) without notice of the deposits coming to you, and you corresponded with his brokers in order to determine how to invest this money?

A No, usually I determined it before hand. I dont believe that those things were put in there by him, I think that they were put in there by me during his absence. I can tell from my memorandum book.

Q (By Col. Gillespie) Where is your memorandum book?

A In the letter case here, sir, I think.

Q See if you can find it?

A Yes sir (Witness examines case.) I think it may be in New York.

Major Raymond: You can produce it in New York.

295 Capt. Carter: Here they are. Now if you will give me dates, I have the memorandum books here.

Major Adams: A deposit was made on February 10, 1893 of $5,850?

A I find the books for '90, '88 and '96, I dont find the others. Mr. Brown packed all these things away for me.

Q Look for a deposit on March 14, 1893 of $7,000.00?

A That was put in by me, because I was in New York at that time and it must have been.

Q You put that in yourself?

A I think I must have done it, because when I was in New York Mr. Westcott would not go down town.

Q You can tell from the bank statement how that was put in?

A Yes sir.

Q Look that up?

A Yes sir. I don't think I have that bank statement, but I will see.

Q When you were in New York was it your habit to make deposits by mail?

A Sometimes I did when I didnt go down town, just depended on the weather, if the weather was bad I did it.

296 Q March 14, 1893, $7,000.00; how was that amount deposited?

A I imagine that it was cash; It dont state here in this memorandum book.

Q The deposit was made by letter; can you tell the source from which the money was obtained?

A I dont remember, but I can find out.

A A deposit was made on July 22, 1892 of $8,100, how was that made?

A That was cash.

Q Who made that deposit?

A That must have been made by me, because I was in New York on that day.

Q Do you know that it was you that made it?

A I dont know, but I presume it was, because the day before I was at Richfield Springs; I presume I must have made it myself.

Q Did Mr. Westcott ever receive cash from you to put in his own box?

A Nothing, except what came from the sale of securities of his; there was no cash that I had coming to me.

Q Will you look for a deposit made on April 12, 1893, one $400.00 and another $3,000.00?

297 A Yes sir, they were made by myself.

Q October 14, two deposits, one of $400.00 and one of $3,000.00?

A (Reading from memo book). "In town this morning; arranged about some of Mr. Westcott's affairs and went up to dinner in the evening." That must have been made by me.

Q Look for October 15, 1893?

A I dont seem to have that—$850.00.

Q Yes, who made that deposit?

A October 15, 1893, that must be a mistake; it is marked here Sunday, but I was in New York, and I presume that it was myself. I dont remember about it, but I notice in here that it was Sunday, evidently that is a mistake.

Q Did Mr. C. H. Vandeventer ever act as your agent?

A As Mr. Westcott's agent.

Q Did he ever make any deposits for you in The Union Trust Company?

A I dont remember; he made some purchases for Mr. Westcott, acting as agent for him.

Q Did he ever receive and deposit money for you?

A Not unless it was from Mr. Westcott; I dont remember about that.

298 Whose property is that file case there? (Referring to file case in the room where the examination was being held).

A It is the property of The United States.
Q When was it purchased?
A It was—I dont remember.
Q How was it purchased?
A I dont remember. Usually the furniture I purchased the usual way I did it was by buying the material, and employing men, men who were carpenters and sending the pay roll to them to sign.
Q Where was it made?
A In New York, or Washington; it was made in Washington by The Woodruff File Case Company.
Q How was this particular case paid for?
A I don't remember that particular case, the desk—
Q I am asking you about the file case; it evidently contains official business and it may contain private business? Can you show the pay roll or the voucher?
A I dont know that I can; my chief clerk attended to all those things.
Q Who was your chief Clerk?
299 A Mr. Sterly.
Q Can he assist you in determining that?
A He very probably can.

J. W. O. STERLY called by Major Adams:

Q (By Major Adams) How was that file case paid for?
A It was paid for on the pay-roll.
Q Can you produce the pay-roll?
A I dont know which pay-roll it is. It was made in 1892, or 1893.
Capt. Carter: You can find out by looking at the letter press copies of letters when you sent the pay roll on, when you sent the roll to be signed by the laborers?
A I did not send it on.
Capt. Carter: I told you to do so?
A No sir, you didnt tell me to send it on.
Capt. Carter. The instructions were when we purchased cases like that, that the material should be purchased and then that the laborers should sign the pay-roll. For instance, there was a man named Hildbrand who made us some

furniture and we paid for the material and sent on the pay roll for the men to sign.

300 Mr. Sterly: We did that in one instance.

Capt. Carter: We did it in every instance.

The Witness: No sir. I did th t under your own directions. You certainly gave me instructions to put that on the pay roll

Capt. Carter: You mean the pay roll that the men signed?

The Witness: No sir, the pay roll, to add it to the mens times.

Capt. Carter: You had no such instructions as that?

A Yes sir, I had instructions to that effect in several instances.

Capt. Carter: To put it on the pay roll and not have the men who did the work sign the pay roll?

A Yes sir.

Capt. Carter: Then you deviated from my orders, Mr. Sterly?

A I have not deviated; I did it under your instructions.

Capt. Carter:—I gave you instructions again and again when you came to me that under no circumstances should there be any suspicion of wrong-doing, and that nothing should be put on the pay-roll, unless the men who did the work should sign for it?

301 The Witness: No sir.

Capt. Carter: Mr. Sterly, that statement is false.

The Witness: No, Capt. Carter, it is not false.

Q (By Major Adams) Can you produce the pay-roll?

A I will try to Major. I dont remember exactly when it was. You (Capt. Carter) have got a receipt for that case.

Capt. Carter: Where is it?

The Witness: I dont kow.

Capt. Carter: When was it purchased?

The Witness: I dont remember, Capt. Carter, I think it was in 1892.

Capt. Carter: I would like to see the pay rolls for 1892: (The witness produces a roll of papers).

Col. Gillespie: What are those papers:

A They are pay rolls. I dont know exactly whether it is on those or not.

Col. Gillespie: Then it is no use to bring them.

Major Adams: Capt. Carter asked for them.

The Witness: It was ordered in 1891. There was a long correspondence referring to it.

Q (By Major Adams) Was there a receipt in the office for that case?

302 A I believe that there was a receipt, Major.

Q What was the amount of the bill?

A I think that it was about $82.00.

Q How did you make up the pay roll?

A The amount of the bill was added to the mens' times.

Q Whose time?

A The men who worked on the pay roll.

Q Men dont work on the pay-roll, they worked making the case?

A The men who furnished the articles did not sign any paper.

Q The men who made the articles, did they sign the pay-rolls?

A No sir.

Q Who did?

A I added it to the laborers time.

Q What laborers?

A The men who were employed working for the Government on Fort Clinch. Then I invariably put a memorandum with the retained voucher, showing just exactly what amounts were paid on the voucher, so and so, item so

303 and so, and then showed it to Capt. Carter.

Q Do you know of any other pay rolls that were increased in amount that way?

A Yes sir, I do.

Q Can you produce the pay rolls?

A There are quite a number of them.

Q Who paid out the money?

A I paid out the money.

Q Did you keep an account of it?

A Yes sir. I burned everything when Capt. Carter went away.

Q When did you burn those papers?

A On the impulse of the moment. I was thinking something might happen.

Q (By Major Raymond) You said you filed the retained vouchers?

A That was a mistake; I was mistaken about that; they were all in an envelope, I had them altogether, all those memoranda—anything I put on the pay roll in red ink—you (Capt. Carter) remember me showing you that in several instances.

Capt. Carter: There never was anything, except when the men who did the work were put on the pay-roll. Little
304 things were sometimes put on the pay rolls, and they were required to sign the men in all cases; the foreman where they bound the books—the professional books were bound at the cost of The United States—I told you to have the men sign the pay-roll, but you were permitted to allow the foreman to sign, but under no circumstances to put it on in any other way.

The Witness: I never received such instructions from you, Captain Carter.

Q (By Major Adams) Examine the pay-roll which I hand you, and see if there are any items there that have been raised?

A Yes sir.

Q Name them.

A Reading from pay roll) Charles Spangenberg, Herman Meyer, Frank Kliner and Louis Spey.

Q Give the stenographer the number of the voucher?

A Voucher number 66, December 1894.

Q Do you know all the men who signed those names?

A No, I do not. There are four names which are fictitious names.

Q Who signed those names?

A I signed those names.

305 A I signed those names.

Q They are forgeries?

A In one respect you may say that they are forgeries, I dont know what you would call them. The names are fictitious.

Q Did you sign the receipts?

A I signed the receipts.

Q Why did you do it?

A I showed them to Captain Carter and showed him the bill and he said that they should be added to the pay-roll.

Q Did he tell you to sign those names?

A He didnt tell me sign exactly those identical names, but he told me that the best thing to do would be to use fictitious names.

Q He knew that you used those fictitious names?

A Yes sir, he did.

Captain Carter: That statement is absolutely false, and I must protest against it. I have put small articles on the pay-rolls; it is incorrect, I know. I have purchased things by

having the material bought in open market, and my instructions were to my clerk to send the vouchers to the men from whom they were bought and have them sign; that was not in accordance with the regulations either, but in both cases
306 it was for material and for labor that the United States received. I have not given any such instructions, on the contrary, my instructions to my chief clerk, in whom I had every confidence, and whom I would have trusted with my life, that under no circumstances should anything be done that had the appearance of wrongdoing. Even when I came here it was the custom to put all sorts of things of that kind on the payrolls. I followed that for a while, and then I made up my mind that I would not do that any more, because, while the Government received the benefit of the work, it was irregular, and might be called in question, so I gave instructions to my chief clerk that under no circumstances should a thing of that kind be done, and to the best of my knowledge and belief it has not been done.

The Witness: Captain Carter, I laid it before you in every instance.

Captain Carter: Dont you remember once or twice coming to me, and making suggestions that such things should be done, and I said to you that you must not do it that I would not have that sort of thing; not to put anything on the rolls that was improper, and as far as those fictitious names are concerned, Mr. Sterly, under no circumstances is that true?

307 The Witness: That is true. The fictitious names I showed you, and everything.

Captain Carter: That is absolutely false Mr. Sterly.

The Witness: Captain Carter, I feel extremely sorry, more than I can express that such a thing could have happened; I am ashamed that such a thing could have happened, but you knew of it.

Captain Carter: That is not true, Mr. Sterly.

The Witness: Captain Carter, that is true.

Captain Gillette: Mr. Sterly has a memorandum attached to this voucher to which these names are added, which comes very closely to the price of the book case. Can Capt. Carter produce his voucher showing the purchase of lumber to make that book case.

Capt. Carter: I dont know that I can do that, because I always left that to my chief clerk, the correspondence was

carried on by him, the material was obtained by him, and when he brought in the papers properly signed I made out a check for them.

Major Adams: Have you any record in the office of this transaction?

A Ordering the book case?

Major Adams: Have you a bill for this book case?

The Witness: I have not the bill.

308 Q Do you know where it is?

A Capt. Carter has got it.

Capt. Gillette: Where is the memorandum you showed me the other day from Hilderbrand?

A Here it is.

Col. Gillespie: This statement reads as follows; "New York, Sept. 14, 1897. Mr. J. W. O. Sterly, to Rudolph Hilbrand, dr., 319 E. 64th, St. Dec. 22, 1894, Mr. J. W. O. Sterly, $160.33. Aug. 29, 1893, Capt. Carter, $163.10; May 1 1893, Capt. Carter, $132.95." Opposite the first mention of Capt. Carter's name is "Bookcase", and opposite the next is a pencil mark, "Cedar boxes for Capt. Carter". The next item is Dec. 7, 1892, Corps of Engineers, $19.57"; Opposite that is the pencil mark, "Voucher". The next is "Dec. 7, 1892, Corps of Engineers, $351.08". Opposite that is the explanation, "Capt. Carter, $138.88, Lieut. Reese, $212.02". The next is "Sept. 2, 1892, Capt. Carter, $50.59" with pencil mark "Reversible bookcase". "June 11, 1891, Board of Engineers, $163.10; Dec. 2, 1890, Capt. Carter, $502.26." The total is $1,542.98.

Major Adams: How were those items paid for?

A They are all on the payroll.

Capt. Gillette: Accompanying that statement is the

309 following letter:—

"Mr. J. W. O. Sterly, Savannah, Ga.

Dear Sir:—Herewith I beg to hand you in compliance with your request, a list of bills which have either been paid by yourself or Capt. Carter. It is as complete a list as I can get together, and trust it will meet with your satisfaction.

Very truly yours,

"Rudolph Hilbrand."

Major Adams: Have all those items been paid for, has the whole amount been paid?

A The whole amount has been paid.

Major Adams: How were those different items paid for?

A "1890 Dec. 2, $522.26". I think that those were those cases and the table; that was paid on a voucher. I know there was one desk in there, that high desk; the amount on the voucher is $125.00 for cypress.

Q What do you by a voucher for cypress.

A It was, I think for 200 feet of cypress.

Q Did you receive the cypress?

310 A We did not receive the cypress.

Q Can you produce the voucher?

A I think Capt. Gillette has the voucher.

Col. Gillespie:—Did you get authority from the Chief Engineer to buy those articles?

Capt. Carter: No sir.

Col. Gillespie: In procuring office furniture, did you ask authority of the Chief Engineer, to purchase it, before you procured it?

Capt. Carter:—Some of it I did, and some of it I purchased in open market in this way.

Col. Gillespie: Without authority?

Capt. Carter: Yes sir.

Major Adams: Mr. Sterly, do you know anything about that voucher? (Handing witness a paper)

A Yes sir.

Q Was that material received?

A That material was received and was charged—no sir, that was not received, that was in payment of this box, and Capt. Carter had it charged as so much cypress.

Major Adams:—This is for 2,000 feet of yellow pine, and 228 feet of cypress, expended in repairs on the United steam launch, Angler. Was that material received?

311 A That was for book cases, those cases. The total of this voucher is $502.26.

Q Who signed the receipts on the pay roll?

A Those were signed by the men working for Mr. Hilderbrand in New York?

Q Have you a bill for this item of $502.26?

A I have sent for it. I have sent for an itemized statement. I have tried my best to trace those things. That bill was received and sent back for correction. You remember Capt. Carter, that you wrote to Mr. Stone (?)

Capt. Carter:—You corresponded with Mr. Stone. I told you to have his laborers sign it.

The Witness: What is the reason you had it charged to the Angler as cypress?

Capt. Carter: I dont believe it was.

The Witness: It is charged to the Angler.

Capt. Carter: Cypress was used on the Angler.

The Witness: When those articles were received, you instructed me to make it out this way, to charge it to the Angler, and you gave me a memorandum of it, and I got those men to sign it.

Major Adams: Where is the memorandum?

A I have not got it.

312 Capt. Carter: It is useless for me to talk to this man here, I can demonstrate that those instructions were not given him. If there has been anything wrong on those rolls, it has been unknown to me. I trusted everything to my chief clerk. I dont remember about those things, in fact, I remember very little of the clerical work of my office. I had a lot of work, and I trusted entirely to the assistants in my office.

The Witness: You never signed a pay roll until you saw that everything was right. If anything was put on the pay roll you were invariably told of it and knew it.

Q (By Major Raymond) You had a memorandum of those things?

A Yes sir.

Q And you destroyed them?

A Yes sir.

Q When did you destroy them?

A In July.

Q Why did you destroy them?

A On the impulse of the moment.

Q What caused that impulse?

A My true reason was this, because I had been loyal to Capt. Carter as a man can be, more than I properly
313 should have been, and I was afraid if anybody should find them, they might think that something was wrong.

Q In whose handwriting were those memoranda?

A Mine.

Q You were afraid then that if you preserved them it might make trouble for Capt. Carter?

A Yes sir.

Q When did you change your mind about that and conclude that you would tell all about those things and make trouble for Capt. Carter, when did you change your mind and conclude that you would tell all about those things?

A I did not change my mind. I determined to tell the truth about everything.

Q You destroyed the memoranda because you thought they might make trouble for Capt. Carter?

A Yes sir, I did it on the impulse of the moment.

Q When did you afterwards conclude that you would make a statement of those things?

A I will tell you how that came about; there was a man came here by the name of Shelley, who wanted to see the pay roll.

Col. Gillespie: When was that?

A Some time about the beginning of September.

314 Q This year?

A Yes sir. He came and wanted to look at the pay-roll. Capt. Gillette told me to produce the pay-roll. The man had not been working on the Angler. The Angler was repaired by the Burns Estate, there was so much for material and the rest for labor. Capt. Carter required that the pay-roll be signed by the men, and Mr. Ely could not find all of his men, and got those men to sign, then the pay-roll was made out in the office for the amount due him, and this man heard of it, and came to see the pay roll. He said Mr. Ely made him sign the pay-roll, and that he never worked under him.

Capt. Carter:—How did Mr. Ely come to put him on the pay-roll?

A He had to furnish signatures. I dont remember the circumstances any more, but I think that Mr. Ely could not get hold of all his men, so Shelley's name came on the roll, I have forgotten the circumstances. I can't tell the amount of the pay-roll, but it was the amount due Mr. Ely, he was the Estate of Burns.

Major Adams: Do you know of any other fictitious pay-rolls?

A Yes sir, we have some, I can't tell now Major.

Capt. Carter: Who put those fictitious names on those rolls?

A I did.

315 Q (By Major Raymond) What is this? (Handing witness pay roll)

A That man Flint did some repair work.

Col. Gillespie: Was all that was represented by this money done for the office?

A Yes sir. The money all went out for the government.

Q The work represented by those men on that pay roll was done for the office at odd times?

A Flint, I dont know what he did;Oakman,probablymade some rubber stamps and that was put on the pay roll.

Capt. Carter: I should like to have an opportunity to find out whether these are fictitious, and if so, why.

Q (By Col. Gillespie) Were you directed to write fictitious names?

A I said that the best thing would be to use fictitious names.

Q You suggested that you use fictitious names?

A Yes sir.

Q (By Major Raymond) Those four names which you say are fictitious, and which you wrote yourself, Charles Spangenberg, Herman Meyer, Frank Kliner, and Louis Spey; they all appear to be written, they all have the appearance of being written in a different handwriting, and yet you 316 say wrote them all yourself?

A Yes sir.

Q Then you disguised your handwriting purposely?

A I can't tell exactly.

Q Look at them;—have they not the appearance—I have not analysed them, but do they not appear to be written by different people?

A They were all written by me.

Q You attempted to make them look as if they had been written by different people?

A Yes sir.

Col. Gillespie:—Do I understand you to say that you suggested that they should be put on that way?

A I told Capt. Carter that he had better use fictitious names for them. I showed Capt. Carter the pay-roll and he signed it. I showed him the bill.

Q (By Major Adams) Did Capt. Carter know that you wrote those four names?

A Capt. Carter knew of it.

Major Raymond:—I want that distinctly brought out—

The board adjourned until Friday, September 24, at 9:30 A. M.

317 The board convened, at 9:30 A. M., pursuant to adjournment.

Col. Gillespie: On yesterday some testimony was given by yourself in regard to the existence of a patent covering certain of the work which you were doing. I dont know that I thoroughly understood you. I dont know whether this patent covers a mattress, a combination of fascines, a method of tying, or whether it covered simply a method of launching them.

Capt. Carter: I have not seen the patent.

Q Then how could you have been afraid of it?

A I knew it from conversation with contractors.

Q (By Major Adams) Name the men with whom you had the conversation?

A William T. Gaynor, I had a conversation with him; I had a conversation as I remember, with R. G. Ross, and my impression is that I had conversation with other people in regard to this, but when that was I am not sure.

Q Do you know when that patent was dated?

A I do not know definitely, but it was during the progress of the work here.

Q About what year, approximately?

318 A I should say it was about 1894, as I remember it.

Q You know nothing about the patent?

A No, personally I do not.

Q You dont know what it covered?

A I understood that it covered the method of sinking.

Q Then you wrote your specifications so as to cover the patent, without knowing what the patent was.

A I had not seen the patent, I didn't know definitely what it was, but the method as I understood it, would have given them an advantage over other contractors, which I desired to avoid.

Q Did you ever ask Mr. Gaynor what his patent covered?

A I believe I did ask him, but my memory is indistinct as to exactly what it did cover. My impression is that it covered the method of launching, whether it covered anything else, I dont remember.

Q (By Major Raymond) You knew at the time?

A Yes sir, I knew at the time because we discussed it, but I dont remember now.

Q Ought you to have had definite information as to the patent when you drew the specifications?

319 A I did not consider it necessary at the time.

Col. Gillespie: You knew of the existence of the patent, or believing that you knew of its existence, you thought that was definite enough information. How could you prepare specifications to prevent an infringement of that patent?

A By leaving out anything concerning the method of sinking.

Q You also gave testimony yesterday which on reflection I did not clearly understand. That was in regard to the increase of the material?

A Yes sir.

Q You were asked if the increase of material under the contract of the amount in the specifications used for canvassing bids, would not be an injustice to disappointed bidbers?

A I said I did not think it would.

Q Why could not that be so; why was it not so?

A I can concede that an excess of that kind might occur, but I believe that it was not an injustice, because, so far as I could ascertain, the contractors were deriving no more advantage from doing things as I wanted them done, than they would have derived by carrying on the work with

320 the exact quantities given in the specifications, whereas, the United States by carrying it on in that way would be the loser.

Q Is not a contractor usually benefited by an increase in the quantities delivered?

A No sir, not necessarily, because the benefit is just about the same, in other words, the stone would have benefited them about the same as the mattress.

Q Was not the price largely in excess of the contract immediately preceding this one, for mattresses?

A I dont remember that definitely; the records will show it.

Q Take Cumberland Sound. The contract price in 1896, was $1.10?

A Yes sir.

Q The contract immediately preceding that, by Mr. Bangs, in 1894, was fifty-seven cents?

A Yes sir.

Q In Savannah harbor, in 1892 and 1896, we have two prices exactly the same. If the Atlantic Contracting Com-

pany in 1896 were willing to bid at the same price they got in 1892 for the same work, is not that an indication that they did not lose any money on that contract?

321 A I presume it is.

Q The presumption would then be that by largely increasing the quantities of material delivered the net earnings would be increased?

A Yes sir, if the quantities were increased absolutely; if both were increased then the earnings would have been increased.

Q Do you think the decrease on the stone proportionately as great as the increase on the brush?

A I think they were approximately as great.

Q I have called for official drawings of the identical mattress that you have adopted, and I cant find them.

A I dont know there is one in existence.

Q Did you ever prepare one of this combination mattress that you have adopted on your work?

A I dont remember whether I did or not.

Q Did you ever prepare official drawings of the three designs, for the information of the Chief Engineer?

A It seems to me that I did, but I dont know. Those are things I dont remember.

You do not know then whether the Chief Engineer ever had drawings of these mattresses?

322 A No sir, I am not sure.

Q No bidders that ever came for the profiles, ever saw any drawings?

A I dont know whether they did—I think that—I am not sure about that.

Q We are talking about a matter within a year, within a short period, less than a year?

A I know that. As I remember it. I did not have any official drawings, I think that I made a pencil sketch.

Q Did you go to all that trouble for every man who came and asked for a profile?

A Yes sir. If any contractor came in and wanted information, I gave it to him.

Q Did you ever furnish a pencil sketch to distant bidders?

A I dont think I did.

Q You furnished distant bidders no information except the specifications?

A I sent one copy of the specifications to each of the

distant bidders, and then if he desired to bid, I would be glad to furnish the two remaining copies and give them any information they wanted.

Q (By Major Adams) Those types of mattress
323 were adopted a long time ago?

A The first two types—all of them were adopted some time ago. The first type has been adopted since the days when it was—it was first used I believe, in Wilmington.

Q When you originally adopted them, did you make a drawing of them?

A They were adopted before I came here, and I dont remember whether there was any drawing or not. My impression is that when I first came here that for my own information I made sketches for the profiles, showing those things.

Q In your official notes, may you not have some sketches, if you do not have official drawings?

A I may. I dont remember about that, but my conviction is that I have made them, and when the contractors bid on the work in 1892, I think, I had them. I think the majority of the bidders, I think every one of them, saw the work and was told and knew that it was the same kind of work that was in the specifications, the same kind of work that was going on.

Q Thus, if you made original drawings some years ago, you might not have thought it necessary to renew
324 them afterwards?

A I dont remember. The way I usually did was this, when I came across anything in my district that was new to me, I worked it out, and then after that I didn't think much of it. It was in my mind clear, and I may have presumed that it was as clear to every one else. I may have neglected of later years to make them. I may not have thought it necessary. I would like to state this, that I submitted very few things to the department or to my superior officers, relying upon showing them the work when they were here. What I did was based upon my idea, it may have been a wrong idea, that I had the right to change the details of the work, provided I conformed to the general plans, and that is the way I carried it out.

Col. Gillespie: Q Does the act contemplate that this work should be done under your sole responsibility, or under the responsibility of the War Department?

A I dont remember what it says. Under my plans—

Q Is the expenditure on a river and harbor under the responsibility of the officer in charge or is it under the responsibility of the War Department?

A I dont know exactly how to answer that. I am responsible to my superior officers and I am responsible to
325 the Chief of Engineers, and he is to the War Department.

Q Is it not absolutely essential that the Department should have complete information of whatever is done?

A I think it had complete information. I didn't think it was necessary to give them further information, for if I had thought so, I certainly would have sent it to them.

Capt. Gillette:—It was testified to yesterday that some guide piling driven by the contractor, for the purpose of aiding in sinking the mattresses, was paid for by you as linear feet of pile dam. You didn't cover that in your explanation.

A That was not put there for the purpose of sinking the mattress; the mattress could have been taken off without that, but I wanted the piling put in the work for the purpose of giving close work, and also for the double purpose of protecting the small boats coming from Dafuskie. There were a number overturned and the darkeys thrown in the water. I allowed the contractors the benefit of those piles. They were for the benefit of the United States, and it was proper for me to allow them, and I concluded it was fair that they should be allowed and paid for.

Q That was on Cockspur Island training wall?

326 A Yes sir. The contractor could have sunk the mattress without them. I wanted the brush fascines forced into one another and I could only do it in that way, therefore I paid for that piling as linear feet of pile training wall. There was a contract in force and by authority I had permission to do work under it, in the nature of repairs, for the pile training wall, and as these piles had to be driven, little by little ahead of the work that was being done, it was more economical for me to have them driven in that way by the contractor, than it would have been if they had had to come down and drive a few piles, to go down and come back, because they would have had to charge more for them.

Q Who originated the idea of putting them in, you or the contractor?

A I required them to be put in, as I remember it.

Q Do you know whether there has ever been any official letter or order about that?

A No sir, I dont remember. A great many of those orders, a majority of my orders were given by orally, in person, to the inspectors and contractors. My assistant engineers in this district have been practically inspectors, because I have been on the work nearly every day, and in conversation with my assistants I have found out how the
327 work was going on, and whether it was being done properly, and I did not require reports. If I had had an assistant in local charge of the district as I was in charge of this district, of course, I would have required more reports. My memory may be in fault as to that.

Capt. Gillette: I find on the 12th of March a voucher in which you pay for 200 linear feet of guide piling, and a memorandum in your own handwriting says, "100 linear feet of pile work equal estimate for barge and hose," indicating that you paid for the barge and hose as linear feet of pile work. The date of that voucher is March 10, 1895.

Capt. Carter:—Let me see that. Can you find out when the work was done at Fort Pulaski, when the mining casemate was built at Fort Pulaski? This is evidently an estimate of pile work for some other work done down there. I remember that I got a barge and hose from the contractor down there and I believe that that was the price of that, and for convenience I put it on here as estimated linear feet for pile work.

Major Adams: Were you in the habit of paying for articles used or articles purchased as linear feet of pile dam?

Capt. Carter:—I dont think so, but I have done this, when I would have a certain amount of work done, and there
328 was difficulty in getting the bill or something of that kind from the contractors, I have ascertained from my assistant or inspectors the price of that and have allowed that to be estimated in the work as work.

Major Adams:—Afterward you certified to the voucher in making this payment?

A Yes sir.

Q Did you make a false statement?

Major Adams:—Was the pile dike paid for constructed?

A No, it actually was not.

Major Adams: When you signed the certificate to that effect, that the voucher was correct and just, did you not think you were making a false statement?

Capt. Carter: I was not, if this position of mine was correct. I would like to be permitted to state here, not in estenuation of anything which may be considered improperly done, but in explanation of why those things were done; without desiring at all to avoid any responsibility, purely and simply to explain how those things may have been done. The first work of this character that I ever did was on this coast here, and when I came here I found the method very different than it was in the military division of the department of Mis-
329 souri; finding things absolutely different, I very naturally, as assistant, had to fall into doing the work in exactly the same way in which I found it being done, and I have continued that more or less up to the present day, so that I feel sure, in some instances, my vouchers will show that actual linear feet of pile work paid for was not done. There was no attempt to conceal this at all. It was in my own handwriting, or in that of my clerk. I felt perfectly justified in doing it. This particular voucher I dont remember. The only possible explanation that I can give is that it was made in payment of some work of that kind. You will find in all of my reports anything of that kind put down in red ink, so that you can go back to the original vouchers and find out every single thing.

Major Raymond: Is that on your retained vouchers?

A I think so. They were all approved by my Assistant Engineer and by myself. The report to the engineer was a bare statement of what was done, but on the retained report an explanation of every item that has been sent to the Chief Engineer should be found.

Q In this particular case a receipt can probably be found?

A I think so.

Capt. Gillette: I would like to see you find it. Can
330 you find the explanation in this case if I produce the full report?

A The chances are that I can. Of course, I may not be able to do so.

Q What reports would you like to have?

A I would like to know whether the works at Fort Pulaski were not going on then. If I look through the reports, I may find some memoranda which will explain this.

Col. Gillespie: I wish that you would look in the records of the office and find it?

Capt. Carter: It is possible that I may not be able to find it.

Col. Gillespie: You have free access to the official records of the office to enable you to answer any question that is asked.

Capt. Carter: It may have been that this was for the survey; I dont know what it was for now.

Col. Gillespie: Would you like to refresh your memory by an examination?

Capt. Carter: When those things were reported by my assistant engineers and inspectors I would make a memorandum of them.

Q Who was your assistant engineer at that time?

331 A Mr. Cooper was assistant engineer.

Q Would not Mr. Cooper remember?

A I think he ought to.

Q Would you like to call Mr. Cooper?

A I would like to have Mr. Cooper.

Capt. Gillette: I let Mr. Cooper go back to the work today. He will be here tomorrow.

Col. Gillespie: If Mr. Cooper is not accessible, will you get a statement from Mr. Cooper to that effect, Capt. Gillette?

Capt. Gillette: Yes sir.

Capt. Carter: It may have been during the survey. I remember that I got some barges to make some examination. It may have been for something of that kind. Mr. Geisler may remember.

GEISLER called:

Capt. Carter: Mr. Geisler I find in my memoranda here 100 linear feet of pile work, which was estimated as barge and hose; do you remember whether I used that on the survey, do you remember anything about that item?

A I remember the item; I dont remember what it was used for. I made a note of it in my own report to you.

332 Q You dont know what it was for?

A I really dont know. I only had my information from you.

Capt. Gillette: Was it for the construction work, or work on the survey?

A I know that it was for some necessary work on the

river not actual pile work, and it was paid for as the equivalent of that. (The stenographer's notes do not show whether this answer was by Capt. Carter or Mr. Geisler).

Major Adams:—In this voucher it is stated that the application is for jetty work; the certificate signed by Capt. Carter is as follows, "I certify that the above account is correct and just, O. M. Carter, Captain, U. S. A." Is that a true or false certificates?

A I consider that it is a true certificate. Anything connected with the jetty work and necessary to carrying on that work is the jetty itself.

Q Did you not suggest that it might be something connected with Fort Pulaski?

A Yes sir.

Q And next that it was something connected with the survey?

333 A I did.

Q Is either the first or second supposition jetty work?

A Strictly speaking it is not jetty work. I see the criticism and admit it.

Col. Gillespie: Is there anything in the specifications, or in the contract that called for any jetty work on this breakwater; was there anything in the specifications that called for anything like jetty work?

A No sir, those were put there for survey purposes.

Capt. Gillette: You may want to state something further about the soundings which showed the necessity for an increased amount of brush work on the Tybee breakwater?

A That I dont remember, Captain Gillette; I will have to see the master of my boat and find out. He may remember where the boat was. It was my habit to do a great deal of my work in this district right by myself from the deck of my boat, and have the men on board make soundings in various portions of the river, and I would note them down either on a scratch book, or on a memorandum book I had in my pocket.

Q Do you think you may have done that in this case?

A Of that I am not sure. The fact that I made those soundings must be true, because at the time I wrote that

334 letter it was evidently fresh in my mind. I dont remember whether they were made by myself, the inspectors, or who.

Q What peculiarity of the water, or depth of the water would it be that you based this increased estimate?

A There were two things which I may have based it on it may have been that after the mattresses were sunk, sounding over them showed that I did not get the height that I expected, and that they required more brush, or it may have been that along the line of the work I found deeper water that I had anticipated when my project was made, and therefore it required more brush. I dont remember. I dont sup- that there are any official records of those soundings in the office, otherwise they would have been found.

Q Could you go out to the breakwater in your boat to day, do you think, and tell when you were on the site of the breakwater, and would soundings show anything at all?

A Unless I knew where the line of the work was, without instruments, I could not.

Q How could you tell where the line of the work was?

A I could only know it by the ranges.

Q Do you know that there are such ranges?

A I know that there are, or have been.

335 Q What do they consist of?

A Clusters of piling driven there which we used as survey stations. Then there were single piles in addition to that.

Q The two causes which you say would require an increased quantity of mattresses, were shrinkage or sinking of the mattresses and increased depth; are there any other things that could have caused the necessity for a greater quantity of brush?

A Either a shrinkage, or a subsidence, or an increase in the depth of the water.

Q Which of those could be properly designated "new soundings?"

A Any soundings that I took later than the original soundings.

Q Which of those facts, a subsidence, or a shrinkage, or an increased depth of water who show that more mattresses were required by new soundings?

A All three would be shown by new soundings.

Q If new soundings had shown a subsidence or a shrinkage of the mattresses, would you not say something of that kind in your letter?

A Not necessarily. I was writing the letter, not you.

336 Q I was trying to find out what your idea was?

A I dont know how it is with other men, but for me it is very difficult to carry on a large amount of work and remember whether I did a certain thing, or whether I made a certain statement.

Col. Gillespie: It is apparent from the question of Capt. Gillette that he trying to ascertain exactly why you recommended the increase in the quantity of brush?

A From some new soundings that were made. How they were made it is impossible for me to say.

Capt. Gillette: The documents which I filed with the Board yesterday, indicate that you made a statement concerning the inside route to Beaufort, which was not borne out by the facts. In your report of a survey for a steamboat channel between Beaufort and Savannah you discussed two routes, a third route, the one that has always been used, you did not discuss at all; why not?

Q Because it was not necessary to discuss it. It is not a proper route.

Q Why not?

A Because, since the building of that training wall down there and the deposition of dredge material shoaling has
337 taken place to such an extent that the route will not keep open. Furthermore, it is not proper for another reason, that I needed the flow in Wright's river across Tybee knoll.

Q That is the reason that you didnt discuss it at all.

A I dont know whether that was the reason in my mind at the time. They are two and sufficient reasons why it should not have been discussed.

Q The same objection you make to it applies also to what you call "Route 1"?

A I dont think the objection of shoaling applies to route 1 so much as the objection of drawing off the water from the Savannah river.

Q What caused the shoaling?

A Two causes. The main cause was the construction of the training wall along the river, and then another cause was the deposit of a certain amount of dredge material.

Q In this channel?

A Not in the channel, somewhere in the vicinity. The route is not very wide.

Q (By Major Raymond) About how much dredging material was deposited in that vicinity?

A I dont know, I dont remember. There was an open-

ing left in this dam, but my intention was to close it. I
338 may say here that route 2 has been objected to by masters of vessels, on account of its length, but I consider that entirely out weighed by the benefit of the improvement to the Savannah harbor.

Q Here is a letter to you by a man by the name of Hirt from Indiana (Reading letter.)?

A I received that letter.

Q Did you receive the check for $132.10, mentioned in it?

A Yes sir.

Q What did you do with the funds thus received?

A There was a certain amount, nine or ten, or eleven dollars, which I paid out of my own pocket to bring back that outfit. I had better explain how this was. Mr. Hirt was agent of a boat called the "Santee," that used to run from here up the Ocmulgee river, and it sunk. He came here and wanted the use of the snag boat to raise it. We used to be permitted, under conditions where no wrecking plans were obtainable to use the snag boat for this purpose. I told him that he could have the use of the snag boat, but I could not guarantee that his boat would be raised, and he made deposit of a certain sum, four hundred or five hundred dollars. I gave Mr. Bur-
339 nett, who was assistant engineer, and who had had more experience in that sort of work than anybody else, leave of absence on full pay, to go out on this work. They did not succeed in raising her, and Mr. Hunt was very much disappointed at the matter, but he kept staying on the matter until the money he had left here was all used up on the pay rolls, and I notified Mr. Burnett that he must come back. As I remember then, when he got back to Doctortown he could not get under the bridge and there was a delay of a couple of days, and when they got back I found that they had left the diving outfit. I needed the diving outfit and asked Mr. Burnett why it had not been sent down. Mr. Hirt came to see me and I told him that it must be sent back; finally I had to send for it; I think it cost nine, or eleven dollars, then I figured up how much the boat was delayed in coming back and found out how much money he ought to pay, and I made $132.10 the balance due. When the check came I turned it over to my chief clerk, and wrote to Captain Goethals who has charge of the money accounts to know if I could deposit to the credit of the Ocmulgee River appropriation, and he told me that I could not. I had that money on hand and no way

to get rid of it, and sometime after that Mr. Sterly told
340 me that he had used the money when he went to Patchogue, and wanted to know if it was not a proper use of the money, because he was a clerk here in the office and his expenses could be paid out of the various appropriations, he asked me if it was a legitimate use of the money, and I told him, no, I thought not, that he had better retain it for the present, that he had better put it back. Then I forgot about the money. The money is still in the hands of Mr. Sterly. Whether he has put it back I dont know.

Major Adams: Do you know of any reason why money belonging to the United States should not be deposited in the Treasury under the head of miscellaneous receipts?

A If it had been deposited as miscellaneous receipts it would not have been used for the work for which it was intended.

Major Adams: That is the proper disposition of it, under the law and under the regulations?

A My idea was this, that if any expense be incurred on a certain river, when the money came for the reimbursement of that it came out of that appropriation.

341 Q You stated yesterday to the board that this wooden file case belonged to the United States? (Referring to a file case in the office where the examination was taking place).

A I think it does.

Q We find in that case the records connected with two accounts in the Union Trust Company, New York, the first account in the name of R. F. Westcott, O. M. Carter, Attorney; the first deposit was made October 19, 1891, $5,000.00; the second account is in the name of O. M. Carter.

A I think you have got the two accounts changed. The first was in the name of O. M. Carter, and the second in the name of O. M. Carter, Attorney.

Q I am correct in my statement. Tell me when the second account was opened, the one in the name of O. M. Carter?

A The first account, in the name of O. M. Carter, was opened in 1891.

Q The fact is that they were both opened on the same day, October 19, 1891?

A What account?

Q One in the name of R. F. Westcott, O. M. Carter, Attorney, the other in the name of O. M. Carter?

A You are mistaken about that, Major, because R. F.

Westcott's account was not opened until way along late in 1894 or in 1895.

Q The information which I have about this matter comes from the records, which are here?

A May I look at them, I feel sure that you are mistaken about that.

342 Q I have taken my memoranda right from the records and it is hardly worth while to waste any time over that. I want to ask you questions, and not you ask me. After I am through questioning I shall be glad to have you say anything you please; for the present I want to ask you questions. I want to know what the amount of the first deposit was?

A I dont remember, I think that it was five thousand, or ten thousand dollars.

Q Who made that deposit?

A Mr. Westcott. I think that was in 1891.

Q The deposit was made on October 19, 1891?

A Yes sir.

Q The amount amount of it was $5,183.33. From what source was that money derived?

A I don't know what source, except that Mr. Westcott took me down to the bank, introduced me to the trust company, and made a deposit for the purpose of sending me to Roanoke, Va., for the purpose of having me look after some of his private affairs.

Q What about the other account in the name of R. F. Westcott, O. M. Carter, Attorney?

A I think that that is a mistake, Major.

Q I find a check drawn on the account of R. F. Westcott for clothing from Hatfield & Son. Was that clothing for you or for Mr. Westcott?

A For me.

Q In the same account I find a check drawn in favor
343 of R. S. Burnett. Who is R. S. Burnett? That check was for $365.00?

A He was my assistant Engineer.

Q Was Mr. Westcott indebted to him?

A No sir, in no way. I don't suppose Mr. Westcott ever heard of him.

In drawing that check did you act as the attorney of Mr. Westcott

A Yes sir.

Q I find here a check drawn in favor of Lucinda M. Carter Who is she?

A My mother.

In drawing this check did you act as the attorney for Mr. Westcott?

A In what account was it?

Q In the account of R. F. Westcott?

A As his attorney.

Q I find a number of checks drawn in favor of I. Stanton Carter? Who was he?

A My brother.

D. P. Carter?

A He was my brother too.

Q In drawing these checks in favor of them, those two brothers, did you act as attorney for Mr. R. F. Westcott?

A If they were drawn out of his account, I did.

Q They were drawn from the account which we are discussing, the account of R. F. Westcott, O. M. Carter, Attorney.

I find another check drawn in favor of B. D. Green for
344 $910.00. It appears that B. D. Green is associated with the contractors for the work which has been under your charge. You testified yesterday that you had no business relations with B. D. Green. You have admitted that you borrowed $1600.00 from him. Was this $910.00 in part payment of that loan?

A No sir, I think that it was this, if I remember right I had him make a payment to a woman in New York, I think it was in that way.

Q For a payment made to whom?

A To a woman in New York, that I didnt want Mr. Westcott to know about.

Q This check says that it was for services, for whose services was it?

A Hers—It was not services really. I didnt want to draw the check directly to her, and that was the way it was put down.

Q The object of these questions is to find out, or to have Captain Carter explain to the Board whose account this is, to find out who are interested in this account of R. F. Westcott, O. M. Carter, Attorney?

A I can tell you Major.

Q I would prefer to have you answer my questions. Under date of May 1, 1895, the balance standing to the credit of

R. F. Westcott, O. M. Carter, attorney is $26,056.08. It appears from the record that $24,851.83, belonged to some person known as "A" that $1,204.25, belonged to some person known as "B". The sum of these two amounts is $26,056.08, the total balance. Who is "A"?

345 A They were not people, as I remember it. As I remember that account, this was transferred back to him, and this large amount was taken by me for the purpose of making certain purchases for him, in other words some private matters of his, which were transferred back to his own account; that is my recollection of it.

Q We can say then that for your purposes of bookkeeping, "A" meant Carter?

A Yes sir.

Q And for your purposes of bookkeeping "B" meant Westcott?

A They were both Westcott, but A was the account of Mr. Westcott that I was taking care of, the other was an account that he was taking care of himself?

Q The account is balanced again on June 13, 1895; the total balance is $41,927.57. It appears that of that sum $37,984.97 belonged to "A". Was that Carter?

A "A" was the account that I was responsible for, for purchases.

Q $2,905.26 belonged to "B"; the difference between these two sums and the total balance is $1433.34. It is suggested that this is for collections in June not yet divided. What does that mean?

A It means this, that they were certain of those rentals that I put—rentals of his, which I put in his own account.

Q You had an account in your own name in this trust

346 company?

A Yes sir.

Q The next balance is June 27, 1895, total $27,303.98. Of this sum $27,186.37 belonged to A, and $117.61 belonged to "A", making the sum of $27,303.96, the total balance. It is noted in the record, behind the "B", the letter "W", in pencil. Who is "W"?

A I think that "W"—I sometimes used "A", "B" and "C"—that is a private account, not this general account, which I had charge of for the purpose of investment, this was a private account, I think that was the way of it.

Q I wish you would remember that statement. The next

balance is on October 21, 1895; total $6559.98. Of this amount $2867.67 belonged to W and $3692.31 belonged to "C". Who is "C" and who is "W"?

A I presume that "W" and "C" are the same as "A" and "B". I sometimes used one and sometimes the other for convenience in dividing this responsibility which I had.

Q Those balances run along this way, two in which the designations are "A" and "B"; the third designation is "A" and "B", or "W"—the third one the balance belongs to "W" and "C". The fourth is December 5th, 1895; total balance $4308.90; of this amount $2370.82 belonged to "W" and $1938.08 belonged to "C", total $4308.90. I notice here that the balance has dropped down from say $42,000. to $4,000. What use did you make of the money that you drew out? 347

A I dont remember but the records will show. I was allowed to draw against this for my own private use, and then the rest of it I invested for him and turned over to him.

Q Invested in his name, or in your name?

A Sometimes in one and sometimes in the other.

Q Did you make any reference to the investments in distributing the balances between "W" and "C"?

A I dont think that I did, because all that was placed in the safety deposit vault.

A All that?

A The money was put in my name or his.

Q Please remember that?

A Yes sir.

Q The next balance is January 1, 1896, $3,336.09, of which sum $2911.79 belonged to "W", and "424. belonged to "C". The next balance is February 1, 1896; total $3184.54; of this amount $2661.61 belonged to "W" and $522.86 belonged to "C". The next balance is March 1, 1896, total $4374.66; of this amount $3,999. belonged to "W" and $375.66 belonged to "C". The next balance is May 1, 1896; on it is noted "R. F. W", $5986.07" Who is "R. F. W."

A Mr. Westcott.

Q Explain who Mr. Westcott is?

A He is my father-in-law.

Q The balance as stated in the check-book, entered at the top of the left page, $6,533.48; May 6, from O. M. C $144.84"; who is "O. M. C."? 348

A Myself.

Q "May 9, J. B. S" $1,139.99". Who is he?
A Mr. Solly.
Q Who is Mr. Solly?
A He is the father of Mr. Westcott's son-in-law.
Q In what capacity did he act in making the deposit?
A I know that he collected rentals from time to time; Mr. Westcott sent me a statement of them—I dont remember.
Q The sums last mentioned are added up and the total is $7818.31; from this sum is deducted $Checks $1381.65". the difference is $6436.66. Behind that is noted "Balance May 11"; next "Transferred back to R. F. W. on that date". Who is "R. F. W" in this case?
A Mr. Westcott.
Q In this interval, covered by the balances just mentioned you made several investments. On October 4, 1895, page 426 of your letter book you order from Reed & Flagg 200 shares of Delaware & Hudson Canal, at 130; 200 shares of Delaware, Lackawana and Western at 170, "To be registered in my name". was that money your money or Mr. Westcott's?
A It was Mr. Westcott's.
Q Why did you have the stock registered in your name?
A I did it for the reason that I expected to dispose of the stock, and having it registered in my name—I dont
349 know why I did it, except that it, was my desire to have it done.
Q Have you disposed of it?
A Mr. Westcott has, he has both of them in his possession; I know that The Delaware, Lackawanna and Western had been transferred, I dont know whether the other has or not.
Q Why was it transferred to him?
A Because it was his.
Q On February 26, 1896, you wrote a letter to Reed & Flagg, asking that the dividend on the Delaware and Hudson be deposited to your credit; was it so deposited?
A I think that it was.
Q Have you ever collected the dividends in your own name since?
A On the Delaware and Lackawanna I think I collected them until it was sold.
Q When was it sold?
A That I dont know; there is a record of it I think, in the books. I am not sure that the Delaware and Hudson has been sold; I think that the other is sold.

Q Here is a bank statement of May 3, 1897; the balance to the credit of O. M. Carter is $6519.25. This account is the name of O. M. Carter, in the Union Trust Company, New York. In this statement I find this entry, "1897, January 20, cash dividends Delaware, Lackawanna and Western, $350.00". "March 15, 1897, dividend, Delaware and Hud-
350 son Canal Co, $250.00." I find also "April 2, coupons 50 L. & G. 6's, 1500". "April 20, Div. D. L. & W. $350." To go back to the transfer of the first account to R. F. Westcott, will you inform the Board whether you are still acting for R. F. Westcott, and whether you have drawn any checks?

A I dont think that I have drawn any checks since then.

Q It is of record that you have drawn checks since May 11, 1896?

A Then the power has not been revoked.

A I want to go back again to a question I asked you yesterday. I asked you whether "R. F. W." or R. F. Westcott drew checks in his own name, from this same account, I mean from your account as attorney, you were in doubt about that?

A I remember some—I dont know.

Q It is of record that a number of checks were so drawn by "R. F. W", or R. F. Westcott?

A After he came back he may have—he was in Europe one or two years, I am not sure.

Q Have you ever made any investment jointly with Mr. Westcott?

A We have made investments in this way, we have made investments jointly in which he was to give me out of those advances a certain share. I remember that there was some property in Orange, where he had some property, where I agreed with him that he was to put in a certain amount; it was to be jointly and he was to give me that.

351 Q Was there any correspondence between you and Mr. Westcott on that subject?

A I think so, we talked about it anyway.

Q In discussing that subject did you make any proposition as to such an investment?

A We must have discussed it, but I dont remember in what way. We met and talked it over and he is building those houses out there now.

Q Did you propose to Mr. Westcott, using your own words, "That we put in from fifty to sixty thousand dollars each?

A I expect that I did, because that is the way that we talked about it.

Q In this particular case of investment in Orange what did Mr. Westcott put in?

A I think that he transferred the land he had there—a half interest in it to me, and then I transferred from that account I held for investment an equal sum with him.

Q Did you consider that your money, or Mr. Westcott's money?

A It was his, but he had given it to me, otherwise I could not have given it back to him. There has been no distinction between Mr. Westcott's money and mine.

Q How much money has Mr. Westcott turned over to you since January 1891?

A That is pretty hard for me to say.

Q Can you approximate it?

352 A He turned over to me all that I have spent during that time, except what my salary was, then he has turned over some things to me which made investments for me.

Q Where did he get the money to make those investments?

A I dont know how he got the money; he had the money; I dont know where he made it, I suppose in the various corporations; I dont know the source, because he had this money when I first knew him.

Major Adams: The letters in which the investment in Orange is discussed are between Capt. Carter and some one who signs his name "Daddy", and they are to be found in letter book No. 8, pages 368 to 373, under date of January 25 and January 27, 1897. These are letters addressed to "Daddy".

Q Who is "Daddy"?

A Mr. Westcott.

Q Major Adams: The letter written by Capt. Carter, and addressed to "Daddy, is found in letter file case, No. 11, dated January 25, 1897.

Q I dont understand how you could make a proposition in which he puts in certain lands and you put in fifty-five to sixty-thousand dollars, which you describe as putting in that amount each, without you had some ownership in that $55,000.00 cash?

A My relations with him were different—they were not business relations, they were personal relations; he loved me very dearly, and he does yet. I had access to his safe deposit

vault; I had a power of attorney from himself and from
353 his wife; and while the money came from him, I could do as I pleased with it; he gave it to me, he was liberal to me.

Q How many children has Mr. Westcott?

A He has three.

Q Living?

A Yes sir.

Q His wife is living?

A Yes sir.

Q When you came to Savannah some years ago, you borrowed $1600.00 from B. D. Green. What resources did you have at that time of your own?

A I had very little.

Q How many payments did you have to make to return that $1600.00?

A I had to make a lot of them, it is pretty hard work for me to remember.

Q It seems from these letters, that in 1897, it appears that you are undertaking to put from fifty-five to sixty thousand dollars in an investment; where did that money come from?

A It was all derived from Mr. Westcott, except the little bit that I may have saved myself, very little.

Q How much have you received from Mr. Westcott?

A I have received what I have expended, and then he has put some property in my name; I don't remember. He put a house in my name, and then I gave back into his possession things which I had had of his, things that I had been buy-
354 ing, coupons that I had been clipping dividends that I had been receiving, turned over to him the balance that I had, and then when I went away he gave me a letter of credit; that was all I asked.

Q I have here a statement of account from the Union Trust Company, New York, dated January 16, 1897, the account is in the name of O. M. Carter, the balance is $4985.37; "Deposited December 1, 1896, 10 coupons St. Paul, Minneapolis and Omaha Railroad, $300.00; 10 coupons Morris and Essex; 20 coupons Lake Shore $700.00. Deposited by letter December 14, $200.00. December 15, dividend Del. Lackawana and Western, $350.00; by R. F. W. $2142.45." Was Mr. Wsetcott still making you gifts by depositing to your credit; this is under date of December 15, 1896?

Q He either did that, or he allowed me to take his money and deposit it to my own credit. Sometimes he would make deposits and sometimes I would make them.

Q Did those bonds belong to you or to Mr. Westcott?

A To Mr. Westcott.

Q Is Mr. Westcott able to deposit his own coupons?

A Certainly.

Q I have here a statement of account in The Union Trust Company, with O. M. Carter, balance November 4, 1896, $6,422.15; deposited September 15, 1896, dividend Delaware and Hudson Canal, $350.00; Oct. 8, cash Coupons $2425 (?); by letter October 12, $270.21; Deleware and Lackawanna
355 dividend, $350; 50 coupons U. S. 5's, $625.00. Can you tell us, approximately, how much money has been turned over to you by Mr. Westcott, all told?

A To me to handle for him?

Q Deposited in your name in the Union Trust Company?

A I know it was quite a large sum, to be it appeared to be large.

Q Do you think that it amounted to as much as $100,000?

A I expect that it does.

Q Why did you close this account in the name of R. F. Westcott, O. M. Carter, Attorney?

A Because he came back to America. He only opened it because he went away. That was the short account, the other is the long account.

Q Has Mr. Westcott ever acted as your agent?

A In what?

Q In anything?

A I think he has.

Q Has he ever received money from you?

A If he has—I know that he has not received any money for me, because I didnt have any that he could receive, I dont know, I dont know that I understand you.

Q Have you any explanation that you want to make to the Board of the facts presented in connection with the two accounts in the Union Trust Company, New York?

A Yes sir, I can explain that very readily. I think
356 that The Union Trust Company and Mr. Westcott can tell you the whole thing. If you will permit it I would like to have the small account book showing the first deposit in the bank in my own name; it is a small book.

Col. Gillespie: What kind of a book is it?

A A small check book. That is it. This book shows that that account in 1891 was opened in my own name, and not in Mr. Westcott's.

Major Adams: Both are on the same date?

Capt. Carter: It is not possible.

Q Is that right (Handing witness paper.)?

A I presume that it is right. This was in 1891.

Q Here is a statement (handing witness paper)?

A That is mine.

Q You are satisfied as to that one?

A I think so. I know that the account was put in my name in 1891, because I remember the circumstances.

A Is this the account under which you acted as attorney?

A No sir.

Q The first deposit was made in your own name in October, 1891?

A Yes sir, that is correct; the first deposit in my name was made in October, 1891.

Q The first item of the other account was taken from the record, October 19, 1891, from R. F. W., $5,000?

A He put it to my credit, not to his own credit.

Q This is your account?

357 A Yes sir. That is my own name, not Mr. Westcott's name.

Q The sum is $5183.33?

A Yes sir

Q And on the very same day, October 19, 1891, we find in the other account, "From R. F. W. $5,000.00", to your credit as attorney for R. F. Westcott?

A There is a mistake about that. I never drew checks as attorney on that account.

Q This is the one we are talking about?

A I am sure that there is a mistake about this. Mr. Westcott took me down and introduced me to The Union Trust Company as his son in law, and deposited $5,000 to my credit; that was in my own name and I signed checks in my own name. I never signed anything "R. F. Westcott, O. M. Carter, Attorney, until he went to Europe.

Q The two deposits were made on October 19, 1891?

A I know this, I know that I never signed Mr. Westcott's name as attorney until after he went to Europe, because I didnt have power to do so. He may have said to the bank, "This is my agent, my attorney or son-in-law. The account was put in my name—I dont know whether I make that clear.

Q The record is very clear, and your explanation of it is not. Is that your account, or the account of R. F. Westcott? (Showing witness paper).

A That is the account as attorney.

358 Q This other statement covers the same period?

A This is for 1895. The two accounts were running at the same time. This one was not opened until sometime after the other one. This one was opened in 1891, and this one was opened later. I see by the check book that this one was opened on February 4, 1895.

Q Opened by a deposit?

A He had an account in the Union Trust Company in his own name, he gave me money in my own name, and then when he went to Europe, he gave me power of attorney so that I could sign his name to checks; formerly I could not do that; formerly I had to get money from him and put it in my own name; now I could sign his name, and I used that account; the other one I left there and didnt use so much until he came back, when I used it again more. The bank will straighten that out for you.

Major Raymond: I think I see that.

Capt. Carter: In 1891, he took me down to the Union Trust Company and introduced me, and I left my signature. He introduced me as his son-in-law, or his attorney, saying "Everything that is mine is his and everything that is his is mine." He deposited a sum of money, that was in 1891, in my own name, and from time to time after that I made investments for him in things that in my opinion would pay, I kept on right straight along doing this business for him, clipping coupons for him and other things, until he went to Europe, then he took me to the bank and gave me a power

359 of attorney to sign his name to checks; up to that time I only signed my own name, then during his absence I had this check book, and I used it from the time he left for Europe until he came back.

Q This account carries you through the investment in Roanoke; you were not acting as attorney then?

A Not in the bank, I could not sign his name in the bank. I was his agent, but I had no power to sign his name in the bank. He had to put money in the bank in my name I didnt have power to sign his name as attorney until that time.

Q Under date of April 8, 1895, a check is drawn in favor

of Reed & Flagg for $6,500; check No. 27, what was that for?

A I dont remember, it must probably have been for some purchase.

Q Under date of April 9, 1895, check is drawn in favor of Reed & Flagg for $6,956.25, what was that for, check No. 29?

A I dont know without seeing the stub; it is probably marked on the stub what it was for.

Q Under date of June 7, 1895, another check is drawn payable to Reed & Flagg for $13,945; what was that for?

A I cant tell without I see it, it is probably on the stub.

Q Have you any recollection of that?

A I dont remember now, no. I made purchases from time to time from that certain firm.

Q On June 29, 1895, a check was drawn, payable to T. M. Cunningham, for $10,000.00; check No. 77; what was that for?

360 A That was for a mortgage Mr. Westcott made in Atlanta, I think that it was in Atlanta.

Q On June 29, 1895 there was a check drawn payable to the order of John Lyons, for $15,000?

A That was another investment of his in a mortgage here in Savannah.

Q On July 1, 1895, there was a check drawn payable to the order of O. M. Carter for deposit in The Southern Bank of The State of Georgia. Did that money belong to you, or to Mr. Westcott?

A It belonged to Mr. Westcott.

Q On July 1, 1895 there was a check drawn payable to the order of I. Stanton Carter, for $2500.00. This is noted as a present?

A Yes sir.

Q Did you make your brother of $2500.00 belonging to Mr. Westcott?

A That was with his permission; it was not done without his permission.

Q On October 4, 1895, a check was drawn in favor of Reed & Flagg for $10,000.00. It is noted that it was for the purchase of Delaware & Lackawanna stock; was that sufficient to make the full payment?

A That I dont remember, but from the amount I suppose

that it was only a check to enable him to make the purchase, and the balance was sent later.

361 Q On October 9, 1895 a check was drawn in favor of Reed & Flagg for $1238.67 on 400 sh. D. L. & W; 200 sh B. & H., and the note here is "O. M. C." and a small "p." What does that "p" mean?

A I dont remember what that "p" meant. "O. M. C." must have been myself.

Q When you closed out this account on May 11, 1896, why did you make this small deposit of $144.84—why did you make that small deposit on May 6?

A Before closing out? I dont know why it was; does it not tell what it is there.

Q There is a note that it is from "O. M. C"?

A It may have been mileage; I dont know what it was, major—it could not have been my pay, I dont know what it was.

Q Captain Carter, I would like you to explain to the Board how you could make presents amounting to $2,500.00 from this account, to your own relatives, and why it was necessary at the same time to divide the balance between yourself and Mr. Westcott?

A I had an account of his which came in from certain
362 rentals and various things that Mr. Solly had possession of; then I had certain payments that I made for various things; then I had that general account of Mr. Westcott's, for which I responsible to him, and for our convenience and for determining my responsibility to him I divided it into two sets, then from this large account I drew out what I needed myself and the rest of it I invested; then from time to time I would write him what investments I had made and what my personal expenses were.

Q These checks are signed "O. M. Carter," drawn on the Union Trust Company, New York, "February 8, 1897, pay to the order of I. Stanton Carter." Is that a present, like the other?

A Yes sir.

Q Was that made by yourself, or by Mr. Westcott?

A It was made by myself, out of his property.

Q You assert then that the money standing in your name with the Union Trust Company belong to Mr. Westcott?

A Yes sir, it belongs to Mr. Westcott. He has allowed me to expend out of what I want. I have been very extravagant,

and then from time to time purchases have been made out of that.

363 Q On March 29, 1897, there is another check in favor of I. Stanton Carter for $500.00: Is that a present from you, acting for Mr. Westcott?

A Yes sir. I presume I had better explain that in this way, that Mr. Westcott never required me to show him those checks; what I did with the money he didnt ask.

Q About how much did you spend each year?

A I spent a good deal?

Q How much?

A I dont know, I suppose three or four times my pay.

Q On March 27, 1897, a check is drawn in favor of D. P. Carter, for $200.00. Was that a present?

A You could call it a present. It was something I sent him.

Q How much money did you turn over to your own relatives, acting as attorney for Mr. Westcott?

A Quite a good deal.

Q How much?

A I dont know, I expect more than $10,000.00.

Q On April 8, 1897, a check is drawn in favor of M. A. Connolly, for $100.00. Who is M. A. Connolly?

A He was my second clerk.

364 Q Was that a present to him?

A I used to let my clerks have money when they needed it, Mr. Connolly and Mr. Sterly, etc.

Q Was that your money, or Mr. Westcott's?

A Mr. Westcott's; that money was returned; those clerks returned that money, or some of it.

Q On April 12, 1897, a check was drawn in favor of D. P. Carter for $125.00. Was that also a present?

A I think that was something I wanted him to give my mother.

Q July 13, 1896, a check was drawn in favor of I. Stanton Carter for $500.00. Was that also a present?

A Yes sir.

Q On June 29, 1896, a check was drawn in favor of D. P. Carter for $50.00; June 29, 1896, I Stanton Carter $150.00; October 10, 1896, Mrs. E. D. E.—; who is she?

A She is a lady who lives in Connecticut.

Q Was that a present?

A No sir.

Q If you wish you can make any explanation you desire?

A Only this explanation, that I was always permitted to expend what money I wanted for my private affairs, and
365 I did it.

Q This account was standing in your name?

A I know it was.

Q October 15, 1896, a check was drawn in favor of D. P. Carter for $1400.00. I understand you that all these checks in favor of your two brothers are presents?

A Yes sir, from me. Mr. Westcott permitted me to do it out of my allowance.

Q On October 22, 1896 a check is drawn in favor of R. F. Westcott for $10,000: what was that for?

A To give him back some of his money; he needed it for some purpose, I presume.

Q October 28, 1896 a check is drawn in favor of D. P. Carter for $200.00; check in favor of I. Stanton Carter, January 25, 1897, for $500.00; December 30, 1896, check was drawn in favor of D. P. Carter for $250.00; December 10, 1896; I. Stanton Carter, $100.00; December 10, 1896, D. P. Carter $200.00; December 9, 1896, check was drawn in favor of B. D. Green for $1,000. What was that for?

A To give to "E. M. T." It was a lady to whom I wanted to give that. I can give you her name and address if you want it. She is now in this country, she was, then, I think, in Paris.

366 B. D. Green, then, has acted as your agent?

A In things like that. He was my friend, whom I knew that I could trust to attend to private matters with which I didnt want to have anyone's name connected. He was a gentleman and I could trust him.

Q November 17, 1896, Tiffany & Co. $245.00; January 3, 1896, Number 205 1/2, pay to the order of—somebody, what is that "Chickamore"?

A I dont know what that is.

Q The check is signed, "R. F. Westcott, O. M. Carter, Attorney," and endorsed "Annie Chisamore," for $25.00; March 21, 1896, check in favor of D. P. Carter for $250.00; December 23, 1895, D. P. Carter $200.00, signed "R. F. Westcott, O. M. Carter, Atty"; November 21, 1895, check in favor of A. Minis, $2220.00, signed "R. F. Westcott, O. M. Carter. Attorney? What was that for?

A I dont know, I imagine that it was on account of a mortgage in South Carolina. Mr. Minis is a lawyer here.

Q November 8, 1895, in favor of William Elliot, $3780?

A That was for the same thing as Mr. Minis.
Q That was an investment?
A Yes sir.

367 Q During the period that you were acting as attorney and drew checks as attorney—here is a check, drawn August 5, 1895, in favor of H. C. Whitman (?), for $25.00, signed "R. F. Westcott"; it appears that Mr. Westcott did draw checks during that time?

A Yes sir, that is the one I referred to the other day. I think he drew a few.

Q October 17, 1895, there is a check in favor of O. M. Carter for $1051.20, signed O. M. Carter, Attorney; October 12, 1895, in favor of B. D. Green (?), $500.00; October 4, 1895, in favor of Reed & Flagg, for $10,000, signed O. M. Carter; October 2, 1895, D. P. Carter $83.33, signed O. M. Carter, attorney; July 5, 1895, in favor of O. M. Carter, $5000.00, signed "R. F. Westcott, O. M. Carter, attorney, endorsed, "Pay to the order of The Union Trust Company, New York." Why was that transfer made, why was that transfer made from one account to the other?

A What date was that?
Q July 5, 1895?
A Think that that was a letter of credit, I remember that I was going to Europe—I dont remember, Major, you can tell by the stub.

368 Q January 7, 1896, in favor of the Union Trust Company, for $2,000, signed "R. F. Westcott, O. M. Carter, Attorney." What was that check drawn for?

A I dont remember, Major, you can look at the stub and see.
Q Where are the first of those stubs?
A I think the first were away back in Leavenworth. (Here Major Adams seem to be referring to a lot of check stubs which are before the Board.)
Q These are all Union Trust Company?
A These are all things I have had since coming to Savannah.
Q Is the stub check book here belonging to you, referring to your account in The Union Trust Company?
A Yes sir.
Q Where is it?
A It is here; that is it, that is the first deposit I spoke to you about; that is what I meant when I said that it was in my name instead of Mr. Westcott's

Q This you say is the first check used in the personal account?

A The time Mr. Westcott gave me the money, for the money he gave me.

Q Check No. 6, drawn in favor of "O. M. C" that is 369 yourself?

A Yes sir.

Q That is for $100.00; it is marked "For personal account"; that date is October 22, 1891. It then appears that as early as 1891, you made a distinction between your personal expenses and checks on account of Mr. Westcott's business?

A Yes sir, I made a distinction. I dont know whether I always made it or not.

Q Check No. 8, drawn October 27, 1891, in favor of Chas. P. Rogers & Co., is marked "Personal"; October 27, 1891, check No. 9, to the order of Arnold, Constable & Co., for $13.50, is marked "personal"; October 30, 1891, No. 11, $18.00, to the order of J. W. Scully, for fuel, marked "personal". I would be glad to have you explain to the Board, having in mind, first, that you made a distinction in 1891 between your personal expenses and checks drawn on account of Mr. Westcott's business, and having in mind that you carried this distinction through this personal account, through this account as attorney, down to the date of May 11, 1896, when you transferred the balance due to R. F. Westcott, amounting to $6,436.66, having all that in mind, please explain to the Board just when you ceased to discriminate between the money that belonged to yourself and the money that belonged to 370 Mr. Westcott?

A I dont know when that took place. It took place gradually, as I knew Mr. Westcott better and he got more confidence in me he took me into his affairs and I began to make investments for him. I think it was about the time my wife died, as I remember it.

Q How long have you been associated with Mr. M. A. Connolly?

A He has been my clerk for a good many years, I dont know how long.

Q On November 28, 1891 a check is drawn in favor of M. A. Connolly (Or M. A. C.), for $125.00. What was that drawn for?

A I dont remember at this date. It was my custom to give my clerks money sometimes to make purchases, some-

times they wished to make purchases and sometimes I would make them temporary loans.

Q Is Mr. Connolly now in the employ of The United States?

A He is.

Q In what capacity?

A He is clerk to the Nicaragua Canal Commissions.
371 He is on leave of absence. He is not employed at this moment.

Q April 11, 1892, Check No. 69, in favor of Thomas H. Reese, $100.00; what was that check drawn for?

A For Lieut. Reese.

Q Did you employ him?

A No sir, he was an officer in the Corps of Engineers, and he was my assistant here. I think it was a loan.

Q It appears for services on bridge work?

A Yes, I do remember that. I was employed as consulting engineer by some of those bridge companies, and I let Reese do the work and get the money for it. I know that I had a lot of work of that kind along the Ocmulgee river. I dont know what particular case that may be.

Q May 13, 1892, No. 77, in favor of R. F. Westcott, $641.98, "For balance due on account". You did then, as early as 1892, distinguish between money that belonged to you and money that belonged to Mr. Westcott?

A I distinguished a great deal more than than I did later.

Q After drawing that check, did the balance of the account belong to you?

A I dont remember. At that time I dont think I made any investments for him. I dont think I did until after
372 he began to know me better, until after my wife died, or about the time of her death.

Q September 28, 1892, check in favor of R. F. Westcott $345.13. It is noted, "Return of money advanced". Did that indicate that you were distinguishing between money between money belonging to you and money belonging to Mr. Westcott?

A That I dont know. He may have advanced me money for some purpose and I may not have used it, and returned it.

Q It does indicate a distinction between money belonging to you and money belonging to Mr. Westcott?

A He may have given it to me, perhaps for himself, perhaps for me. I dont remember.

Q December 31, 1892, check to the order of C. H. Vende-

venter, $1126.25, "For balance on Erie bonds". Was that investment made for Mr. Westcott?

A That was Mr. Westcott's.

Q Why did you not transfer that money to him when you transferred the balance on the last check?

A I dont know why I didnt.

Q February 11, 1893, check to the order of C. H. Vandeventer, $5150.00, "For bonds". Bonds purchased for yourself, or for Mr. Westcott?

373 A For Mr. Westcott.

Q March 15, 1893, check to the order of C. H. Vandeventer, for $5,000.00, "for loan on call at 6 per cent"; March 24, 1893, to the order of I. Stanton Carter, $200.00; April 17, 1893, order of R. F. Westcott, "To buy bonds", $2.000, check No. 193. Were those bonds purchased for yourself?

A No sir. He gave me some stock shortly after my wife's death, as I remember, but I dont think he gave me any bonds.

Q That money, then, belonged to Mr. Westcott?

A It may have been his; the bulk of everything I received was his.

Q May 3, 1893, check to the order of I. Stanton Carter, $100.00, check No. 200, marked "present". June 23, 1893, check No. 211, to the order of D. P. Carter, $1,000.00. You then began making those presents to the members of your own family from funds belonging to Mr. Westcott, to the amount of $1,000?

A They were funds belonging to him which my wife was to have had after her death, and then I began to use the money which would have been hers, and I have continued to do that to the present day.

374 Q Do you hold anything today in your own name?

A I do.

Q Does it belong to you?

A Some of it does, the rest of it—I dont know whether I should say that it belongs to me or not, it was put in my name in order that I might—some of it I consider does belong to me.

Q What is its value?

A I should say about $18,000: I dont remember.

Q July 1, 1893, No. 217, check to the order of L. M. Carter, $125.00. It is marked, "Allowance up to October 1"; is that right?

A Yes sir.

Q Check No. 241, September 7, 1893, order of Mrs. E. D.

Griffin, $500.00, "Marked "For Emerson's schooling; $400.00 full term, $100.00 as extra funds". Did Mr. Westcott make that donation to Mrs. Griffin or to Emerson?

A He allowed me the money for the education of that little boy. At that time I was permitted to begin his education, and I have kept it up ever since.

Q October 31, 1893, check to the order of I. Stanton Carter, $250.00, check No. 254; November 1, 1893, check No. 255, to the order of I. Stanton Carter, $250.00. Can you
375 explain why Mr. Westcott contributed those two checks, within the space of two days, to I. Stanton Carter?

A Because I wanted it done, I suppose; whether it was within a few days I dont know.

Q December 21, 1893, check No. 276, to the order of B. D. Green, for $200.00; December 23, 1893, check No. 278, to the order of "I. S. C"., $250.00. Is that I. Stanton Carter?

A Yes sir.

Q On February 21, 1894, check No. 303 to the order of I. Stanton Carter, $100.00; March 9, 1894, to the order of I. Stanton Carter $100.00; March 13, 1894, check No. 314, to the order of Lucinda M. Carter, $100.00; April 11, 1894, check No. 322, to the order of I. Stanton Carter $100.00; April 17, 1894 check No. 326 to the order of I. Stanton Carter $100.00; April check 327, to the order of B. D. Green, $194.65; April 23, 1894, check No. 331 to the order of I. Stanton Carter $100.00; May 25, 1894 check No. 340 to the order of I. Stanton Carter $250.00; June 5, 1894 No. 344, to the order of B. D. Green $500.00; June 18, 1894 check No. 345 to the order of I. Stanton Carter, $250.00; June 18, 1894, No. 346, to the order of L. M. Carter $125.00; July 19, 1894, check No. 357, to
376 the order of I. Stanton Carter, $200.00; August 4, 1894, check No. 354, to the order of I. Stanton Carter. $200.00; Sept. 6, 1894, to the order of I. Stanton Carter, $200.00, No. 358; No. 359, Sept. 17. 1894, Lucinda M. Carter, $125.00; No. 361, Sept. 28, 1894, I. Stanton Carter $500.00; October 3, 1894, No. 362, to the order of O. M. Carter, $1,000.00, indorsed to Sterly for payment of employees. Have you any explanation of that?

A I believe I used to give my chief clerk money and when the men came in before the end of the month, he would take their signatures and pay them, and then at the end of the month I would be reimbursed. I advanced my own funds in that way to pay those men that had families.

Q Your own funds?.

A I let the chief clerk have the money.
Q You said you advanced your own funds.
A Funds in my possession.
Q Your money or Mr. Westcott's money?
A I don't know which, but I presume it was his, because what I had was infinitely small compared with his.
Q Check No. 369, Dec. 15, 1894, to the order of "L. M. C." $125.00. Is that L. M. Carter?
A Yes sir.
Q No. 370, Dec. 15, 1894, to the order of I. Stanton
377 Carter, $100.00; No. 382, "D. P. C" that is D. P. Carter?
A Yes sir.
Q Jan. 29, 1895, for $250.00, marked "For January, February and March, 1895". At that time did you make an allowance to D. P. Carter?
A No sir, that was for my mother. My mother was living there.
Q Are those on the Union Trust Company?
A I dont think they are. (Major Adams is here referring to a stub check book which he has in his hand)
Q This book which I have in my hand was found in the file case, which you say belongs to the United States. It is marked on the outside, "Certificate Book of the Empire Construction Company". Certificate No. 1 is in the name of Benjamin D. Green, 1,980 shares and across the face is written, "Cancelled, B. D. Green, President". The date is June 10, 1891. Certificate No. 2, A. M. Newton, five shares, signed James E. Chandler, secretary; Certificate No. 3 Jas E. Chander, five shares, signed James E. Chandler, Secretary. Certificate No. 4, John M. Waddell, five shares, signed James E. Chandler, Secretary, and on the back is written, "Transfer to Edward H. Gaynor". Certificate No. 5 five shares, John A. Roebuck, signed James E. Chandler, Secretary, B. D.
378 Green, President. Certificate No. 6, John F. Gaynor, five shares. Certificate No. 7, Edw. H. Gaynor, 5 shares. Certificate No. 8, Neal McLaughlin, 100 shares, and across the face, "Cancelled. B. D. Green, Prest." Certificate No. 9, Thomas Riley. 100 shares. and across the face, "Cancelled, B. D. Green, Prest." Certificate No. 10, W. Hegeman. Are those initials correct?
A I am not sure.
Q This is the same Hegeman that I was asking information about yesterday?
A I saw Mr. Hegeman a few times.

Q I find in this same case a telegram from W. W. Hegeman, in which he calls for a check on account of work at Fernandina, and says that the "Captain" wants it, who is the "Captain"?

A I dont know, a telegram to whom?

Q To you.

A I dont know unless he means Capt. Green; that's the only captain I know of.

Q B. D. Green?

A I suppose so.

Q Certificate No. 5, Col. John F. Gaynor, 800 shares, and written across the face, "Cancelled, B. D. Green, Prest."

379 The last certificate is not numbered. It is drawn in blank for 1,980 shares, signed B. D. Green, Prest., and indorsed on the back "B. D. Green." Would that certificate be good in the hands of any man who might hold it?

A I dont know.

Q How did it come into your custody?

A It came here, as I remember it, by either Capt. Green or Mr. Gaynor bringing the book up here, and leaving it on my desk, and I picked it up when they went out, and saw that it was a private book and put it inside my desk, where I supposed it was. Evidently it must have been forgotten and left there, and Mr. Brown packed it away.

Q Why would Capt. Green bring this book here?

A I dont know why. I dont know that it was he. Evidently it was one of those men.

Q When was it left here?

A That I dont know; it is so long ago that I have forgotten.

Q What was this company organized for?

A I dont know.

Q What did you say yesterday that it was organized for?

380 A I dont know exactly, my impression is now that Mr. Hegeman was thinking of bidding on some work, railway work, up in New York, and that's what it was organized for. Mr. Hegeman was also engaged on the East River tunnel.

Q Did you ever carry on any correspondence at any time with a view of securing work for the Empire Construction Company?

A I dont know whether I carried on any correspondence with that object in view.

Q Did you write any letters of recommendation?

A I wont be sure, but I think I did.

Q Have you ever written a letter of recommendation for Capt. B. D. Green?

A I dont know, I would have done so if he had asked me, but I am not sure.

Q There is a copy of such a letter in the letter press book.

A Then I must have written it. I would have done so with pleasure if he had asked me.

Q Did you propose to do any work in the state of Ohio for this construction company?

A I think not.

Q Did you undertake to secure any work?

A I dont think so.

381 Q Did you write any letters of inquiry in regard to it?

A That I dont remember. I remember going to Ohio, as I said yesterday, but I dont think it was in connection with any work for that company.

Q Did you or Mr. Westcott have any communication with Mr. Rossiter of the New York Central Railroad, with the view to securing work for that company?

A I dont know whether it was with the view to secure work for that company, or to secure work for Capt. Green. We had some talk about work I know, but exactly what it was for, I dont believe that I could tell.

Q In that oak case we found a communication from Mr. Rossiter to Mr. Westcott. Has that communication any relation to this work proposed for the Empire Construction Company?

A That I can't tell.

Q What did you say about it yesterday; didn't you say something about a railroad somewhere in the Adirondacks?

A I know there was a railroad up there somewhere, but whether this letter refers to it I dont know.

Q Did you write any letters yourself on that subject?

A That I am not sure of. I know at that time there
382 was a question about my resigning and accepting service in the New York Central Railroad, and I became acquainted with Mr. Rossiter and other men, but whether I wrote him letters, or whether I introduced those people to him, I dont remember. I should have done so if they had requested it.

Q The object of asking these questions is to find out

whether you have been associated with B. D. Green, John F. Gaynor or W. W. Hegeman, or Edward M. Gaynor in any business enterprises.

A I have never been associated with them. I have talked over matters with them, but I have never done anything that could put me under obligations to them in any possible way.

Q I understood you to say yesterday that you had had no business relations with any of the contractors connected with this Atlantic Contracting Company?

A My relations have been personal. I have not had business relations—that depends on the interpretation, if by personal relations you mean business relations—it depends on the interpretation of "business relations." I have had no business relations with the view to being association with them in any thing that might be improper. I have tried to assist them in several cases.

383 Q Do you know anything about the West End Land Improvement Company of Petersburg, Va?

A I think I do, I am not sure about that?

Q Have you taken any interest in it, or had any correspondence about it?

A Yes sir, I think that I had some correspondence about it.

Q Land at Roanoke in 1891?

A Yes sir. (Here Major Adams is referring to memranda which he has in his hand)

Q Street railway company in Savannah?

A Yes sir.

Q Manganese, deposits in Georgia?

A Yes sir.

Q Phosphate deposits in Florida, 1889?

A Yes sir.

Q Savannah Lighter Company, 1891?

A Yes sir.

Q Paving Company in Savannah?

A I dont think I had any interest in that paving company.

Q Cotton compress?

A I dont think I had any interest in that.

384 Q Hydraulic jack?

A Yes sir, I was interested in that.

Q Who was interested with you in that?

A Mr. Minis, and I believe Capt. Green and Mr. Gaynor. I am not sure about that, I would like to look up the records and see. That was a cotton compress and it started with Mr.

Minis, who was a cotton factor, and he suggested a man by the name of Clay to manage it. I know Mr. Minnis was in that.

Q The question is mainly to find out whether you have had any business relations with your contractors, you said yesterday you had not?

A No, I have not. That jack was a little thing, we put a little money in it and nothing came of it.

Q Where did you get the money to go into these enterprises?

A I think we only put about $50.00 apiece or something like that.

Q I have asked you these questions in regard to the contractors, and I have invited your attention to these checks with a view to your giving the Board any information you may be disposed to in regard to your relations with these contractors, the Gaynors, Capt. Green, Mr. Hegeman and
385 also Mr. Westcott?

A I have no information in my power which I would not willingly give the Board. There are many things that I dont remember without looking them up. There never was any secrecy about these matters. About this hydraulic jack, Mr. Minis and several others put in $50.00 or $100.00 apiece. I am not sure who the others were, I remember Mr. Minis because he was the man who suggested it.

Q Did you ever take an interest in a stone quarry?

A Yes sir, but I didn't put up the money. Other men put up the money.

Q Did you have any correspondence with Capt. Green as to the sale of this stone?

A Yes sir.

Q Could you properly have such a correspondence when Capt. Green was agent for the contractors under this contract?

A I think so, major, because there was nothing which I did from which I received any benefit. It was a personal correspondence which I carried on with him, and which I felt at liberty to carry on with any contractor, my feelings being that so long as I did not use them for any purpose, or make anything out of them, or put myself in the way of
386 business under any obligations to them, it was all right.

Q When you borrowed money from Capt. Green, were you under obligations to him?

A To that extent I was, sir.

Q Have you ever employed him as your agent?

A Never, except in some cases where some little private affairs were concerned. He has kindly done those things for me as a friend would do.

Q Has Capt. Green received or borrowed money on your account, or in your interest, at any time since 1891?

A I dont know, I dont think he has. I dont think of anything where he could have done so.

Major Raymond: At the time you borrowed this money from Capt. Green, was Capt. Green a contractor, or connected with the contracting?

A That I am not sure about, major. It was a long time ago, when my father died, and I dont remember. I remember that I paid him back and I paid him interest on it. The question came up in my mind as to whether I could properly do it, and I concluded that I could. About the other matters here I was unaware that anything I might have been doing could have been construed as looking as though I was under obligations to the contractors. Everything that I did
387 I did openly and feeling that I had a perfect right to do it. There is nothing which I want to hide from the Board, on the contrary, I would like to bring all the circumstances connected with them, before the Board; I would like to bring Mr. Westcott and the Union Trust Company before the Board, and I think I can show the Board that every thing I did was all right in every respect. I have made no concealment, everything has been perfectly open, except a few, matters, which brought in the name of a woman, that is all that I have that I would wish to keep private. I cannot express how shocked I have been that acts which I considered innocent, should have been construed as guilty, and I know that I shall be able to demonstrate to you absolutely that there has been nothing in my mind but the good of the service, and that I have done my duty honestly, fairly and faithfully, without any benefits to myself, except professional benefits, and I would like to have time to bring up those things, and I feel sure that I could demonstrate this to the minds of the Board. It is impossible that I should not be able to make clear to others what is so clear to me.

Col. Gillespie:—So far as that is concerned, the Board is required to submit its report at the earliest possible date.
388 The intention is that after adjournment here, a session be held in New York, where you can call witnesses.

Capt. Carter: I would like to ask Capt. Gillette whether

he has ever addressed one line to me, or ever suggested that these matters should be gone into between us, before presenting them in the shape of charges against me.

Capt. Gillette: I had no communication with you at all.

Capt. Carter: Then I would like to ask you if that is the customary method to pursue among officers?

Capt. Gillette:—I have had no experience whatever in such cases as this before. When I found things apparently all wrong, terribly wrong, to my mind, and when it came to paying for work done while you were in charge, I felt that I could not conscientiously do it, and I wrote a letter to the inspectors, as you see in my report, and recognizing that I could do nothing more just to you or to the government than report the matter at once verbally to the Chief of Engineers, and at the first opportunity, I did so, and he told me to go back and make a report, to make my letter official, but not to copy my letter in my letter book. I did so, and he informed me that he would send a copy of the letter to you at once, but he changed his mind. (Capt. Gillette, afterward requested permission of the Board to withdraw the remark that the Chief of Engineers had changed his mind. See page ..... of this report.)

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Capt. Gillette: Capt. Carter, do you know a man by the name of J. B. Connolly?

A Yes sir.

Q What is he?

A I dont know what he is now.

Q What is his occupation?

A I think he is a writer on a magazine in Boston.

Q Was he ever employed under you?

A Yes sir.

Q In what capacity?

A As inspector.

Q Is he familiar with the mattress work?

A I dont think he is; I think he was inspector of dredging.

Q Is he familiar with the use of a transit?

A I dont remember. I know he was on a dredge down there, but whether he was an expert transit man, I dont remember.

Q Do you remember whether he did any survey work?

A I dont remember.

Q From this payroll does it not look as if he was employed as a surveyor?

390

A Yes sir.

Q Do you remember what the survey was?
A I dont remember.
Q Do you know whether there was any survey work going on at that time?
A I cant say. The date of that was Feb. 1896, during the month of February—my custom was always to look at the number of men on the roll and see whether it was signed properly.
Q If you had seen that he was on there as a surveyor and there was no surveying going on, you would probably have noticed it?
A Probably.
Q Have you ever certified the rolls when you didn't see the occupation of the men filled in beforehand?
A No, I think I usually—I dont remember whether I had my clerk fill that out or not, or whether I just had him simply fill out the names and the signatures. I may have signed the roll when he brought it in with the names signed here, and let him fill it in at his leisure afterward.

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391 J. W. O. STERLY, recalled.

Capt. Gillette:—Look at that payroll, on which the name, J. P. Connolly appears, was he at that time in the employ of this office?
A Not as a surveyor.
Q Where was he at that time?
A He was in Boston.
Q How did he come to sign that roll?
A I think that Mr. M. A. Connolly sent him the roll and told him to sign it. Mr. M. A. Connolly went North on leave of absence, and this is traveling expenses for Mr. Connolly.

Examination of Capt. Carter resumed.
Capt. Gillette: If you saw a name on that roll, Capt. Carter, you would probably know whether the man was in Savanah or Boston?
A Certainly, if I signed that and he was in Boston, I was negligent.
Q Here is a copy of an endorsement, Capt. Carter, on

a letter, dated Sept. 29, 1894, in which you state,
392 "But no checks were ever drawn or payments made before the rolls were properly completed and had been presented to me and signed by me." How do you account for that, when you state that in this case you dont know whether it was filled up after you signed it or not?

A My explanation for that must be this, I knew about those rolls principally from my chief clerk. If he brought the rolls to me and said the roll was checked, I left the checking of the roll with him, I signed it. If I gave the impression that I checked the roll myself, then that is incorrect. So far as the word "complete" is concerned, it is wrong. That it was checked and signed is true. That it was perfectly complete, is a mistake. I remember having signed rolls that were not perfectly complete.

Q The gist of the man's complaint to the Chief Engineer was that they were not complete, and the gist of the reply seems to have been a mistake?

A The gist of his complaint, I think is a mistake.

Capt. Gillette: This is a letter written by Mr. Schneider, to the Chief of Engineers, complaining that Capt. Carter didn't keep the payrolls properly.

Capt. Carter: I think that must be a mistake, because
393 I remember that I signed rolls that were checked and signed, but which were not perfectly filled out, the clerk coming in and saying that he was pressed for time.

Capt. Gillette: This Schneider matter was in 1894, and the Connolly matter in 1896; you may have changed your system after that?

A I dont know when I did it. I remember certifying to rolls and drawing checks before the rolls were entirely written out, the chief clerk coming to me and having the signatures and amounts and saying that they were correct. What time I did that, I dont know, but I know that I have done it.

Q Mr. Hirt, the man who attempted to raise the boat, it seems paid Mr. R. S. Burnett $140.00 for his services from the 26th of April to the 16th of May. It also appears that Mr. R. S. Burnett received from the government $200.00 for the entire month of April, and $200.00 for the entire month of May?

A I explained that this morning. I gave Mr. Burnett leave of absence on full pay.

Q Is that leave of absence on record?

A I dont think any leaves of absence are on record.

Q. Mr Burnett was responsible for the safety and
394 and care of the government property?

A Yes sir, I trusted him.

Q He was on leave of absence and in charge of government property?

A Certainly.

Q You stated yesterday that you sometimes had small amounts put on the payrolls, can you tell us what they were, some of them?

A I dont remember. I remember this that at times I would have the porters pay the post office box rent, and at the end of the month their pay would be increased by the amount of the box rent.

Q I find this telegram to you, "O. M. Carter, Upper Basin, Wyoming: Burnett asks for authority to put in one extra course of grillage timber in foundation for mining casemate. This will save about $500.00. Will organ tomorrow. Sterly. Official business Government rate, paid." That does not appear on the voucher?

A I paid myself for a good many of those telegrams.

Q How?

A I would have Mr. Sterly pay them at government rate and they would not go on the voucher when I was away.

Q On official telegrams?

395 A Yes sir.

Q Why did you do that?

A I simply thought that the United States in those cases ought not to pay for them.

Q When they were official business?

A I have always attended to my official business when I have been on leave of absence just the same.

Q Did you receive a telegram like this, and pay for it, "August 11, 1894. O. M. Carter, Hotel Ryan, St. Paul, Condor; Mail forwarded as directed. Shall I organ today, as intimated by letter of 4th? Sterly. Official business, Government rate, paid." Did you receive and pay for any such message?

A I dont remember this particular message; I know that my custom was to inform my chief clerk that telegrams whether on official business, should be paid for, by the United States, if I was ordered away, and if I was away without authority, I would pay for them myself.

Q Did you receive that message?

A I remember that he sent me a telegram during that time.

Q Were you in St. Paul, August 11, 1894?

A Yes sir, I think so, I can't remember the date.

396 Q What does the word "Condor" in that telegram mean?

A I dont know, we had a code for the purpose of saving expense on telegrams, but I dont remember now what that code was.

Q Could you identify that code now if you saw it?

A I presume it is in the office, I dont know.

Q "Condor", in this code in this letter book means, "Everything all right in district". Do you know what "Organ" means?

A I dont remember, isn't it there?

Q Can you tell by referring to this?

A I dont know. If I went out of my district without authority, I would take leave of absence and tell Mr. Sterly to report it. Sometimes I would go beyond the limits of my district without reporting my departure.

Capt. Gillette: I find this letter in the letter book: "August 16, 1894: Brig. Gen. Thomas L. Casey, Chief of Engineers, U. S. A., Washington, D. C.—Gen.:—I have the honor to report my departure on a seven days' leave of absence, taken by myself in accordance with Par. 45 A. R. 1889. My address will be Savannah, Ga. Very respectfully, Your Obt. Servant,—"

Major Adams: On that date you were in St. Paul?

397 A On the 11th, I was in St. Paul.

Q Do you know whether you signed that letter?

A I presume I did.

Q Your name does not appear here? It is headed Savannah?

A I presume it was written here and copied in this book.

Q I find the following telegram: "August 13th, 1894, O. M. Carter, Mammoth Hot Springs Hotel, Yellowstone Park: Condor. Sterly. Official business, Government rate, Paid." August 17, 1894; O. M. Carter, Upper Basin, Wyoming, Condor, Organ is yesterday; Sterly. Official Business, Government rate, paid." A telegram as follows:—August 20, 1894, O. M. Carter, Hotel Templeton, Salt Lake City. (To arrive) Department disapproves change elevation Pulaski; expect Cicero and Caesar tomorrow, or Wednesday, when I shall Paris and forward project and Cresus, Savannah, or

organ later; condor. Official business, government rate, paid. Sterly." Do you know what "Cicero", "Paris," and "Cresus", mean? "Paris" is "Your presense urgently required"; "Cicero, Caesar" and "Cresus" are not given?

A I do not know what they mean.

Major Adams: This letter would indicate, with your
398 statement that you were absent from Savananh on August 11th, and that you did not return until some time after the 16th, and yet, with the assistance of your chief clerk, you reported in writing your departure on leave of absence on August 16th. Was that a correct statement?

A If that was meant to convey the idea that I departed from here on that day, it is not correct.

Q Was it intended to convey that idea?

A I dont think it was. Sometimes I would leave to attend to some business for Mr. Westcott, and I would be away four or five days, and I remember speaking to the Chief of Engineers about it and I said "Can't I go without reporting it?" and he said, "I can't give you authority," and I said, "I am going to do it until somebody objects" and he said nothing, and I have been away from time to time without authority from my station.

Q When you made your personal report at the end of the month, did you report these absences?

A I reported absent when I had leave of absence, but when I was away without leave of absence, I did not report it.

Q Was that a correct report?

399 A It probably is not, but it was not intended to deceive, because I always kept them informed in Washington.

From a strict interpretation, it is not a correct report.

Q When you made your efficiency report at the end of the year, on June 30, did you put those days of leave of absence without leave in it?

A I dont remember, probably I did. I dont remember how I did that.

Q You remember that there is a blank form of certificate attached to it, that it is a correct statement. Did you make a correct statement when you submitted that report for the year?

A I presume that I did. I dont remember whether I reported the number of days that I was away without leave or not. If I reported only the days I was away on leave of

absence as the days that I was absent from the station, then the statement is incorrect. I dont remember how the report reads.

Capt. Gillette: It reads, "Present on duty; present sick; absent on leave; and absent without leave."

Major Adams: Did you report those absences without leave?

A I dont remember, but my report will show whether I did or not.

400 Q Did you report in your monthly report to to the Chief of Engineers, the days that you were absent without leave?

A I dont know whether I did or not, I dont believe I did.

Q If you had reported that you were absent without leave, do you suppose that you would have been called upon to explain it?

A No sir, because I always told it at Washington in coming back. I remember once Capt. Black came in and said, "Look here, I am going to call you down. You and Bixby and a lot of others have been going around without leave and I am going to call you down."

Col. Gillespie: Did you take those leaves of absence every month?

A Not every month, but frequently.

Major Adams: How many days in the course of a year do you suppose you have been absent that way without leave.

A I dont know. Perhaps as many as twenty days without leave, or not so much—that is mere guess work.

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401 A. R. STEWART, called by Capt. Carter:

Capt. Carter: Did you examine the specifications for the work at Savannah which were awarded in 1896?

A Yes sir.

Q For the purpose of preparing bids on those works?

A Yes sir.

Q Did you notice how many designs of mattresses were in the specifications?

A Yes sir.

Q Were you told how many of those designs would be used?

A My recollection is that you told us on specific inquiry

that probably not any of the second would be used, or very few, but the most would be of number three. That was my understanding.

Q As a matter of fact, on what basis was your bid made?

A I think on No. 3, I think it was called in the specifications.

Q Did you base your bid on these designs as built previously in this work?

A We based our estimate on the work as it had been
402 done before, and our understanding was that it would be of the same general character as what was done before.

Q Were you informed whether or not you might built those mattresses more than one at a time?

A I don't understand your question. If it means that we could build one layer on top of the other instead of laying the layers singly, we might lay them as they had been laid before, we understood that we could do that way. We intended to build and launch our mattresses the same as the present contractor, who had done work previously, had done.

Q If there had been any change in those specifications, would it have affected the price which you intended to bid on the mattresses, I mean if the specifications had been written so as to describe the mattresses as lying on top of one another, would it have made any difference in your bid?

A I am not sure that I understand your question, except this, that we based our estimate on making them and launching them as had previously been done, that it was not imperative as to the manner they should be launched, whether singly, or as had been done before.

Q If that had been written out in your specifications
403 would it have made any change in your bid?

A. No sir, because we based our estimate on the understanding that we could lay them singly or as they had been previously laid, just as suited ourselves.

Q What would you consider, from your experience in mattress work, would be a fair price to a contractor for the mattress work at Cumberland sound?

A I think about the figure that we estimated would have been about right. I think the amount as bid was about a dollar.

Q A square yard?

A Yes sir.

Q What kind of stone did you understand could be used for fourth class stone?

A Florida stone.

Q So far as you understood, was that the general understanding?

A It was the understanding of all the contractors bidding on the work. I say so advisedly, for I know all the contractors who bid on the work, and we had made up our minds before we bid. We made up our minds not to bid on the work for certain reasons that I don't suppose enter into this matter, but we were bidding on furnishing the stone
404 to all the contractors who were bidding. We were bidding closely on furnishing the Florida stone, and there was no other stone considered as fourth class stone, and for the simply reason that this was a stone that we had heretofore been furnishing and that had heretofore been used for this purpose from Jacksonville down. We were bidding to furnish them fourth class stone, thinking it meant nothing else than Florida stone.

Q Suppose you had all understood that Florida stone could not have been used for fourth class stone, would that have made any difference in your estimate for fourth class stone?

A Undoubtedly.

Q Would it have been higher or lower?

A Higher, of course, it would have involved more freight. Of course, other stone is as cheap as Florida stone, but the difference is in the cost of freight.

Q Do you think that if the number of cubic yards of stone were decreased and the number of square yards of mattress were increased, that it would make any difference in the contractors' profits?

A Based on the contractors' prices, without going into the figures closely, my impression is, no. If I were doing
405 that work I would be glad to have the mattress work decreased and the stone work increased at any prices that I know of except the price for No. 3 stone.

Q It would be more advantageous to you to increase stone work?

A Yes sir, that is my impression.

Q Have you seen Florida stone, or the equivalent of Florida stone, used along this coast?

A I have furnished it for the Jacksonville work, for the Savannah work and for the Fernandina work. I am now furnishing it for Jacksonville.

Q Regarding the mattresses; you stated that you understood how they were to be built, and had been built before?

A Oh yes, I was quite familiar with the work that had been done before.

Major Adams:—I understood you to say that you estimated the cost of the mattresses described in the specifications as No. 3 at a dollar a square yard?

A I think that was it. It might have been a cent or two above or a cent or two below.

Q Did you make any estimate of the cost of the No. 1, log mattresses?

A Yes sir, I think that was about $1.25.

406 Q Would that not have brought the cost up?

A It would not have affected it. I don't think it would have made any change. Perhaps if No. 1 was to be used exclusively or No. 2, it would, but it would not make very much difference as to the price we bid on it, because while No. 1 or 2 might be used, we knew that the probability was that No. 3 would be used, or a large proportion of it.

Q Did you put in a bid on this work?

A No sir.

Q Did you say you estimated the cost of the log mattress?

A The cost or the price at which we intended to bid?

Q The cost of it.

A Yes sir. I don't remember just exactly what the estimated cost was in either case, if you were going to ask about the estimated cost of stone, I could tell you.

Q Do you know the relative cost of designs No. 1 and No. 3?

A I don't think it would make any difference comparatively in making the bid. Of course, it would depend on the locality. The stuff varies in different localities. If you could get the stuff in No. 1 and No. 3 in the same neighborhood, it would not make much difference in price.

Major Raymond: Were you present when the bids were opened?

407 A Yes sir.

Q I understood you to say that you were acquainted with the other parties who bid on this work?

A Yes sir.

Q Did you hear any complaints among them that there was any unfairness?

A No sir, I never heard a word.

Q From any of the bidders?

A No sir, I never heard a word.

Q Did you ever hear any charge of favoritism being shown, or that the specifications were drawn so that they favored one bidder more than another?

A I never heard anything of the kind.

Capt. Gillette: Where is your headquarters?

A At Columbia, though we have an office in Savannah.

Q Did you have a contract with the Atlantic Contracting Company to supply stone?

A Yes sir.

Q When was it made?

A Just about the time of the letting of the contract.

Q Before or after?

A It was confirmed afterward.

Col. Gillespie: How long have you been a contractor?

408 A I have been a contractor in this neighborhood for the last seven or eight years.

Q Have you ever made any mattresses?

A I have, but not here.

Q Have you ever made them for government improvement?

A No sir. I have made them for other contractors, not for myself.

Q For what improvement?

A Georgetown was one of them?

Q Have you got any plant?

A We have a quarry plant.

Q Have you a plant for making mattresses?

A There is really no plant required, except scows and a tow boat. We have got a tow boat and scows.

Q If you had taken a contract for the mattress work, could you have readily gotten a plant here?

A We would have done what most everybody else did, we would have built most of it.

Q Would it have required a very large amount of plant?

A Yes sir, we considered it a good large plant.

Q What would you estimate what would be the cost of the plant required in the execution of this contract?

409 A Either one or both?

Q Say for the Savannah station, or the Cumberland sound, just as you choose?

A I should think it would take a plant of about $50,000.00 to be in reasonably fair shape to do either one of them.

Q Have you any intimate knowledge of the plant necessary to do this work?

A Yes sir, I have investigated it.

Q Could you for $50,000.00 acquire a plant to enable you to carry out one of those two contracts?

A I meant $50,000.00 for each of them. I didn't mean to say that we could have completed the contract with that, but we could have started the work. We have about $70,000.00 invested in the Columbia quarry plant. We could have brought a good deal of that here. I meant it would cost us $50,000.00 in addition to our own plant.

Q You think with a $70,000.00 plant you could carry on those contracts satisfactorily?

A Either one of them.

Capt. Carter: At that time could you have carried on this work with no funds available; as you remember it, could you have started on that work without an enormous amount of money?

410 A No sir, I explained to those who were going to be interested in it we might have to do the whole first year's work, and we might have to put in $300,000 or $400,00.

Capt. Gillette: Did you understand that you would have to do a whole year's work before any money would be appropriated?

A I thought it would be eight months or a year.

Q Did you think you would have to advance money for eight months' work?

A Yes sir.

Q What made you think that?

A Because there was no money available.

Q Did you think that you had to work before the money was appropriated?

A Yes sir, I thought we would be required to do that.

Q What made you think that?

A The specifications indicated that when there was no money available for this work, the contractor might go on and do the work.

Q Did you think that you had to go on for the first eight months, until the expected appropriation was made?

411 A There was some difference of opinion as to that, some of us thought we would and others thought we would not.

Q Did you consult anybody?

A We consulted one another.

Q Did you ask Capt. Carter?

A I don't know that I did.

Q This was a very important matter, and you understood or you didn't understand that the work for eight months until an appropriation could be made would or would not have to go on?

A It didn't become a question like that with us. We made up our minds if we got the work to go on with it.

Q You didn't know whether you had to put up an enormous amount of money for those first eight months?

A I thought we would have to.

Q Where did you get that idea from?

A From the specifications.

Q You say that was your opinion from the specifications?

A Yes sir.

Q Did you ask Capt. Carter?

A No sir.

Q Do you know any more important question than that?

412 A Yes sir, the cost of doing the work were of a great deal more importance to us.

Q You didn't ask Capt. Carter about this very important question?

A I don't know that I did, because it was generally discussed among the contractors, and others had asked him.

Q What was the general impression?

A I asked an attorney what the specifications required regarding that, and he was as uncertain about the matter as the others.

Q The attorney could not understand them?

A No sir.

Q Is he a good lawyer?

A It is generally thought so.

Q Do you mean to state that your lawyer did not understand those specifications?

A Yes sir, generally he could.

Q About that particular point?

A No sir, I don't think he very well understood it.

Q You felt that you had to advance all this large sum of money for eight months' work?

A The question was whether we could get the estimates in the shape of certificates for the work done. The ques-
413 tion with this lawyer was not so much as to whether we would have to carry this work on as it was as to whether we could get government certificates, and have them in such shape as to be able to hypothecate them.

Q I asked you whether you and the other contractors understood that you had to work eight months, until the close of the next fiscal year, without funds being furnished?

A We understood that we would have to go on with the work.

Q Where did you get that impression from?

A From the specifications.

Q Didn't you ask Capt. Carter?

A I said I didn't remember having asked him.

Q Do you remember anybody who did ask him?

A I was under the impression that nearly all the other bidders asked him or intended to ask him.

Capt. Carter: You say that you got that impression; do you know whether you got it from me?

A No sir, I don't know how I got it.

Major Raymond: How long would it take anybody who got that contract to get up a plant necessary for this work?

A They could buy a tug boat most any where and
414 they could have their barges built here.

Q Supposing there was no money available, a person who got that contract would have to go to work and get up a plant, whether the money was available or not; the contractor would have to invest a lot of money whether there was any money available or not?

A Yes sir, he would have to invest money in the plant before he got the benefit of the money even if it was appropriated.

Q If you didn't go ahead, you would lose money, the interest on the value of the plant?

A Yes sir, but that was a much less consideration with us than the consideration of whether or not those certificates would be good as collateral. If they were, the money consideration was no trouble to us.

Col. Gillespie: If you had the certificate from the United States, that the work was done, it would be no trouble to get the money.

A No sir.

Capt. Gillette: I want to understand whether you thought you had to work for eight months before there was a government appropriation?

A That didn't impress me so much at the time at all,
415 as we had all made up our minds that we would go on with the work without regard to the appropriation.

Major Raymond:—You would either have to go on at your

own expense or let the plant lie idle and lose the interest on the investment in the plant.

A Yes sir.

Capt. Gillette: What is the price that you told me when going out on the train that you were supplying rock to the present contractor for?

A Fifty-five cents a ton.

Q Delivered on the cars?

A Yes sir.

Q For both works?

A Yes sir, I refer to Florida stone.

Q How far is it from the quarry where you get the stone to Fernandina?

A I supply it from several places in Florida. The stone is peculiar; it is not in shape to quarry, it is scattered.

Q What is the nearest and the farthest distance?

A I think the nearest place would be about 90 miles, and the farthest would be about 160. That's the nearest that I can get at it.

416 Q Do you know what the freight is from the nearest quarry to Fernandina?

A The contractors pay the freight, and I don't know.

Q What do you think?

A I think it is in the neighborhood of a dollar, perhaps a little more. I think at one time it was $1.25. From the quarry that is 140 miles away, the freight was $1.50, and then I think they reduced it to $1.25. I have I have paid $1.50 and I have paid as low as $1.

Examination of Capt. Carter, continued.—

Col. Gillespie:—Before awarding those contracts, or recommending them to the Chief of Engineers for awardment, had you ever made any special investigation as to the probable cost of the stone?

A I made that at the time I made the project for the work.

Q What year was that?

A That was in 1895.

Q What part of 1895?

A I think it was in December, 1895.

417 Q One year before the contracts were awarded?

A Yes sir. The conditions, of course, didn't vary.

Q Were you frequently in the brush camps when those fascines were being made?

A I have been there very often.
Q At any time during the last contract?
A Yes sir.
Q The contract begun Dec. 1896?
A No sir, I have not been in the brush camps more than twice each year
Q Have you ever been personally on the ground when the mattresses were delivered for sinking?
A Yes sir.
Q Under this last contract?
A Yes sir.
Q How many times?
A That I cant tell.
Q More than once?
A O, yes, I have been down there a number of times. How many times I dont know.

At this point the Board adjourned until Friday, Sept. 24th.

418 The Board convened at 9 a. m. Sept. 24th, 1897.
Present, the same as before.

Col. Gillespie: Capt. Gillette makes the request that the name of the Chief Engineer be omitted from testimony given by him yesterday.

Capt. Gillette: Except that I reported to the Chief of Engineers and thereafter did as he requested. I would like to withdraw the statement that he changed his mind. Of course, I do not know whether he changed his mind or not.

(See page 389 of this record.)

CHARLES C. ELY, called by Capt. Carter.

Q Have you been engaged in the contracting business for some time?
A Yes sir.
Q Did you make an examination of the work proposed to be done either at Cumberland sound or at Savannah in the latter part of 1896, with a view to estimating the cost of the same?

419 A We examined the Savannah river work, about Cumberland sound, we did not examine that, as we did not

want to bid on it. We didn't examine it on this letting. We examined it before after the last letting.

Q Are you familiar with the character of the mattress work required under those two contracts?

A Yes sir, I think I am.

Q How many designs are there, do you remember?

A I think there were three under the last specifications.

Q Were you aware as to which design would be the one used?

A I didn't know which design according to the specifications.

Q The first design was a log mattress, the second design is a mattress made with brush fascines, and the third design is a brush mattress upon a grillage of poles?

A It was the third design.

Q Did you understand whether in bidding for this third design you could build those mattresses singly, or on top of one another to any desired height?

A I understood when I bid on them that I could build them in such number of courses as the work required and the
420 engineer desired.

Q Understanding this, would it have made any difference in your bid if you had found that written out in those specifications?

A No, it would not have made any difference.

Q Was it generally understood that the contractors would have the privilege of building those mattresses in this way?

A We supposed so. That is the way we took it ourselves.

Q What kind of stone did you understand was meant by fourth class stone?

A Florida rock.

Q Was or was not that generally understood?

A That I couldn't say. We understood it.

Q Have you ever had any difficulty in getting any information from this office concerning any part of the work that you desired to be informed about?

A No sir.

Q Did you or did you not feel that it was a fair, open competition in every way?

A We did.

Q Did you make an estimate of the probable cost of
420 the work to be done?

A Yes, sir, I did and put in a bid for it.

Q What do you remember was your estimate of the cost

of the mattresses built on top of one another in any way you desired?

A You mean the price we bid?

A Yes sir.

A I think somewhere between ninety cents and $1.

Q Could your bid have been made lower than that?

A I would not have bid a cent below that.

Q Are you familiar with the local conditions at Cumberland Sound?

A Yes sir, I am familiar with them.

Q Do you remember whether the price of $3.50 would be considered by you a very high, a very low or a fair price per cubic yard for Florida stone put in the work?

A I would not say that that was out of reason. That is an exposed position. I dont know what price they were giving for it.

Col. Gillespie: You know of the way in which those mattresses were put into the work?

A Yes sir.

Q Who gave you that information?

422 A I got that from our previous knowledge of the work, and also from information furnished by Capt. Carter that we asked for.

Q Did the specifications supply that information?

A I dont think they did, but I would not say that positively.

Q You say that you bid on this work?

A Not myself, Mr. Ross, I got prices on all the work and submitted them to him.

Q Did Mr. Ross, or did you, as agent for Mr. Ross, or individually, for yourself or anybody else, supply any part of the materials for doing any of the work which has been executed under that contract?

A No sir, that Savannah river contract, no sir.

Q Did you for the Fernandina contract?

A No sir.

Q You stated that you offered bids only for Savannah?

A That was all we bid on. We didn't bid on Cumberland sound.

Q Did you supply for the contractors any part of the material or do any of the work necessary in the execution of this contract?

A No sir, we did not.

423 Capt. Carter: Are you reasonably familiar with the plant required to do this work?

A Yes sir.

Q How much do you suppose it would cost, approximately, for a new plant for executing the work in Cumberland sound under the specifications, or in Savannah harbor?

A Roughly, I would say somewhere between $60,000.00 and $80,000.00, in that neighborhood.

Q Suppose you intended to go ahead and execute a piece of work without waiting for funds to be appropriated; suppose you received the contract and intended to go ahead with the work, would it have been necessary for you to have had a large credit, if not actual cash?

A What do you speak of now, in regard to the plant?

Capt. Gillette: Give the articles, I mean the articles of the plant which you estimate on.

A I suppose it would take, say, three tug boats, say in round numbers $10,000.00 apiece, $30,000.00.

Capt. Gillette: In your estimate on tug boats, do you mean tug boats that are absolutely new?

A Not absolutely new. You may buy a small first-class boat for $10,000.00, or you could buy a larger second class boat for the same money, or you could spend $15,000.00 for a boat. Then I suppose it would take about twelve to fifteen lighters, that would cost from $2,000.00 to $3,000.00 apiece, and then you would have to have mules and carts and all that sort of thing.

Q Do you know whether the contractors are pushing the work properly at Fernandina?

A No sir, I do not.

Q It is of record that they are pushing it very rapidly. Do you know what plant they have?

A No sir.

Q He has one tug boat and four or five lighters in use.

A That is all he has? I dont know anything about that at all.

Q You had a contract in 1889 at Brunswick harbor?

A We had one down there, I dont know what year it was.

Q It is of record that you sent a check for something over $2,000.00 to B. D. Green?

A Yes sir.

Q Was not an Act of Congress passed to have a re-issue of that check?

A I think there was.

Q Why was the check sent?

A We hired them to work for them (?)
Q What do you mean by "them"?
A Green & Gaynor.
Q You bid on the work March 4, 1893, at Brunswick harbor and didn't get it, had you gotten it, would you have hired Green & Gaynor?
A I could not say. I bid high on the work and didn't expect to get it; I didnt expect to get it when I bid on it.
Q In 1891 you bid on a contract for Brunswick harbor and Jekyll, Feb. 14, 1891?
A I did (?) If my name is there, I must have bid on it.
Q Were you ever asked to put in a bid by anybody on any work in this contract?
A I dont remember of such a thing.
Q You always put bids in on your own volition?
A Do you mean me or Mr. Ross?
Q Your bid.
Q On my own volition.
Q Without any suggestion?
A Yes sir, according to my own dictation. Some-
426 times I bid for Mr. Ross.
Q You dont remember about bidding on Brunswick harbor and Jekyll creek in 1891?
A No sir, I dont remember the circumstances at all.
Col. Gillespie: You put in your bid for Savannah harbor; Savannah harbor and Cumberland sound bids were opened on the same day in 1896, were they not?
A Yes sir.
Q Why didn't you bid on Fernandina?
A Because we didn't want it.
Q Because you didn't have plant enough?
A We didnt want the work, that was all. We can't bid on everything.
Q You didn't get you bid on Savannah?
A No sir.
Q Savannah bids were opened first, were they not?
A I could not say that, I dont know which was opened first. They were all opened about the same time.
Q Did I understand you to say that you were bidding individually or as agent for Mr. Ross?
A As agent for Mr. Ross, he was here himself.
Q Why did you not put in the bid in his name?
A Well, sir, I think the bid was in his name. He did
427 the bidding here himself at the time.

Capt. Gillette: You said a while ago that you hired Green & Gaynor to do some work for you under this Brunswick contract; did you work there at all, were you there at all?

A I suppose I was, I cannot say positively now, it was so long ago.

Q You didn't take charge of the work and direct it, you simply turned it over to them?

A No sir, I didn't I hired them to work.

Major Raymond: Is the firm named "Green & Gaynor?"

A No sir, now it is the Atlantic Construction Company.

Q You mean that Green & Gaynor are now the Atlantic Construction Company?

A I think they are, I suppose they are.

Q What part does Green take in it?

A I dont know, I dont know a thing about it.

Col. Gillespie: Did Mr. Ross supply any material under that contract?

A No sir.

Q Or do any of the work?

A No sir.

Capt. Gillette: Here is the pay roll for repairs on the 428 boat "Angler" for the month of November,1890; the name, "M. Shelley," eight days at $3.50, $28.00 appears on it. You had a contract as executor of the Burns' estate to repair the "Angler?"

A A contract,—no sir.

Q Did you have charge of the repairs on the Angler at that time?

A Yes sir,—I know I did some repairs on the Angler at one time.

Q Did you ever see that pay roll as far as you know?

A In that shape?

Q With this name, in any shape?

A I think I furnished this name, the names of the men working there, with the amounts and occupation. I was asked to do it.

Q What did you do that for?

A I will explain that. At that time the Angler had been hauled out, and I was doing the work by day's work. I submitted the bill, some where between $900 and $1,000, and a few days after that Mr. Sterly sent for me and I went over there and he said they would have to have the signatures of the men who worked on the boat. I told him that I couldn't

furnish any signatures because the men were scattered
429 all over and had been discharged. Mr. Sterly said we would have to get them, I told him I would do the best I could. I got the signatures of all the men I could find, but it took me probably a week to get them, and I brought it back to him with those signatures on it, and he gave me a check for part of the money and cash for the balance. That was the last I saw of the pay roll.

Capt. Gillette: I submit the board an affidavit from Shelley, stating that he has never worked on the Angler, etc.

Capt. Carter: Have you ever had a conversation concerning this matter before?

A Yes sir, I have.

Q Repeat the details of that conversation?

A Yes sir, as well as I can. About two weeks ago Capt. Gillette sent for me, and showed me a paper, I think that affidavit from Shelley was it, I think that was the paper, and he asked me to explain the matter, which I did the same way in which I have explained it now. After the explanation he sort of held it over my head and threatened me. He wanted to get some information.

Q Of what kind?

A Testimony in this case, about things which I
430 didn't know.

What did he state?

Capt. Gillette:—Give everything that was said, as near as you can, or give the gist of it.

A After showing me that paper, he said something about the Atlantic Construction Company's affairs, and said I was implicated in it. I asked him how was I implicated in it, and he then referred to this matter, and to the different bids that we had been bidding on around here. Then he said that he didn't want to push that matter, and that he was after information. He seemed to think that I could testify to things I didn't know. He made a remark I believe, that B. D. Green was at the bottom of affairs, and that Capt. Carter was in with him, and he then said that if I would testify he would suppress this thing and not bring it up. I told him I didn't know a thing, only what concerned myself. That's about the whole thing.

Q Did he make any statement concerning what he would do concerning your character, in case you didn't give information?

A I see that you have heard something that I repeated.

Yes, he said that it would besmirch my good name if he pushed it through, whether I was innocent or guilty,
431 and if I would testify to things I didn't know, he would suppress it.

Q In other words, if you didn't testify to things you didn't know, it would besmirch your good name?

A He said it would besmirch my name if it was brought up.

Capt. Gillette: Did I not say that the matter was probably outlawed?

A No sir, you did not.

Q Did I say that I proposed to let you explain that matter in the courts?

A No sir, you didn't.

Q Did I say anything about the court?

A No sir, you didn't say anything about the courts..

Q I asked you if you had put in straw bids in this contract and the previous bidding.

Q You didn't say those words, but it was to that effect. You asked me about the Fernandina work only. That was the bid you asked me about.

Q Did you say that you didn't like to answer that question?

A I said that I declined to answer it one way or the other.

432 Q Did you state that if you answered it in the affirmative it would injure you among business people?

A Not that, no sir, not for that bid.

Q Did I state to you that I was investigating a case of great importance, and this being of minor importance it could be overlooked in the case of important testimony in the greater case?

A Yes sir, just as I have stated, that is the impression you gave me.

Q You know that in investigating large cases what is termed State's evidence is used, where one man involved is exculpated for the purpose of convicting more important people?

A Yes sir.

Q (By Capt. Carter) Do you know of any case where a man knows of nothing wrong, is required to give information and threatened if he does not, his good name will be besmirched, information that he has not got; would you call that State's evidence?

A I dont know enough about it.

Capt. Gillette: Did I give you the impression that I was going to besmirch your good name whether you were innocent or guilty?

433 A You certainly did.

Q I certainly didn't mean to.

A I apologize if I misunderstood you.

Q You told me you didn't know anything about it, and you gave an explanation of this pay roll?

A I didn't know anything about it, no sir.

Q And you gave the explanation about the pay roll that you gave here?

A Perfectly, to that effect.

Q You suggested yourself that you probably had some other men sign when you could not find the men.

A No sir, I didn't suggest it. I tried to explain my recollection of it, and I said I didn't remember the men that signed the roll. I said that the men had been discharged and scattered around, and I went around and got them up and did the best I could, as Mr. Sterly told me to.

Q Didn't I say, "It looks very awkward for you, Mr. Ely?"

A I dont remember, you might have said something like that.

Q Did I indicate to you that I had only begun an investigation of the matter, and I didn't know what the trouble was?

434 A That was my impression.

Q I indicated to you that very probably you had a good explanation of it?

A When I left you I think you were satisfied with my explanation; that was my impression.

Q Did I lead you to think that I believed you one of the Atlantic Construction Company?

A I dont think you did. The impression that you left me under was that you were trying to bluff me. That was about the impression I was led to.

Q Did I not say that so far as I was concerned, if you could demonstrate to me that you were innocent, the matter would not be pushed?

A That was about all there was to it.

Q I didn't intent to give you the impression that if you were innocent I would besmirch your good name and force you to testify something that you didn't know.

A I made the remark when you said that, "Captain, I think you are fair."

Capt. Gillette: My object in the matter was to find out the truth of these enormous bids, which appeared to me to be wrong. I tried to get Mr. Ely to admit that he put in a straw bid and he practically admitted it. He said "I
435 will not tell you, but if you put me on the stand, I will not perjure myself."

Mr. Ely: That is so.

Col. Gillespie: Have you had any business relations in contracting work with Mr. B. D. Green?

A I have not.

Q Has Mr. Sanford Ross?

A If he has, I dont know it. Of course, I dont know his business except down here.

Capt. Gillette: In talking with Mr. Ely, I asked him if bids were not put in for the accommodation of the Atlantic Construction Company, and he admitted to me that such things were frequently done.

Mr. Ely: Yes sir.

Col. Gillespie: That he did it?

Mr. Ely: No sir. I did admit that such things had been done. I want to say this, that when you spoke to me about this thing, after we had talked over this pay roll, I said "I dont believe, Captain, that you would think that there is anything wrong about that pay roll and myself."

Capt. Gillette: Yes.

Mr. Ely: And you said, "Well, I hope there is not."

Capt. Gillette: It looked wrong, but it was so small in
436 comparison with those other things that I was willing to to drop it if you would testify in regard to the other things. Did I give you the impression that I wanted you to testify to something that was not true about those things?

A You didn't give me that impression, no sir.

Capt. Carter:—Pending your investigation of what you thought was wrong in this district, and before the arrival of the Examining Board, have you not spoken disrespectfully of Capt. Carter and publicly insinuated that he was guilty of wrongdoing?

A No sir, not to the public.

Capt. Carter: To men occupying public positions?

Capt. Gillette: Men occupying public positions?

Capt. Carter: Men occupying public positions who come daily in contact with the public.

Capt. Gillette: Men occupying public positions have come to me and stated that they thought that your administration was all wrong, and I may have agreed with them that I thought the same thing.

Capt. Carter: Did you not of your own accord go to strangers comparative strangers, men whom you did not
437 know very well, and before the arrival of this Board, and speak disrepectfully of me and insinuate that I was guilty of wrongdoing?

Capt. Gillette: I dont recall it at all.

Capt. Carter: Since your arrival in Savannah, have you or have you not been on very friendly terms with the agents of the Venable Construction Company?

Capt. Gillette: Certainly not at all unfriendly.

Capt. Carter: Have they or have they not assisted you in one way or another in preparing your presentment of the charges against me?

Capt. Gillette: Not the least assistance that I can think of. Mr. Hancock had said that Green & Gaynor went to San Francisco after my orders to come here were out. I asked him about that, and he didn't remember, he came to me and said he had tried to refresh his memory and as near as he could remember, it was before my orders were out. With that exception I have not had the slightest conversation with the Venable Construction Company, or with any of its members concerning you, so far as I know.

Capt. Carter: Did you or did you not say to some one that you knew a good deal about the work in this district, intimating that what you knew was not of a satisfactory character, before you arrived in Savannah, before you came
438 to Savannh?

Capt. Gillette: The only comment I recall having made on the Savannah district was to Col. Suter; I read in one of your reports an item stating that one tree was girdled, and I said that I thought that was getting reports down to a fine point. I dont recall expressing any other opinion.

Capt. Carter: Before you came to Savannah?

Capt. Gillette: I dont recall it. I had no such idea. I came to Savannah, thinking that everything was in first class condition.

Capt. Carter: Speaking of girdling one tree, have you had experience in snagging rivers?

Capt. Gillette: I have had charge of a river with a snag boat in operation.

Capt. Carter: Rivers similar to these rivers, with swamps twenty to thirty miles wide, and banks easily erodable?

Capt. Gillette: There were small swamps.

Capt. Carter: Have you had any experience on works in a harbor like this?

Capt. Gillette: I have had charge of the jetty work at Humboldt harbor.

Capt. Carter: Is that an estuary on a tidal coast?

439 Capt. Gillette: It is a bay with streams flowing into it smaller than this.

Capt. Carter: Is it similar to this estuary?

Capt. Gillette: It is not an estuary as you mean it.

Capt. Carter: Have you had any experience in connection with the work on the Atlantic coast which would entitle you to consider yourself an expert on engineering matters in this district?

Capt. Gillette: I think I am capable of judging good engineering in this district.

Capt. Carter: Are you intimate with the tital and physical conditions of the Savannah harbor?

Capt. Gillette: I can form a reasonable idea of the inflow and outflow of the tide.

Capt. Carter: What do you mean by reasonable?

Capt. Gillette: I can measure it with the tidal prism.

Capt. Carter: Have you done so?

Capt. Gillette: No sir.

Capt. Carter: Have you made a detailed examination of the physical conditions of this harbor since you have been here?

Capt. Gillette: I have not.

Capt. Carter: Have you made a detailed examination concerning the physical conditions,—personally of the im-

440 provements at Cumberland sound?

Capt. Gillette: What do you mean by "personally?"

Capt. Carter: Making a detailed examination of the physical condition of the work there.

Capt. Gillette: All my soundings have been taken by my assistants.

Capt. Carter: Do you know anything by personal experience of the results of the inflow and outflow of the tide on Cumberland sound over the jetty?

Capt. Gillette: No, no experience, except what I saw when down there.

Capt. Carter: Are you personally familiar with those three routes between Savannah and Beaufort?

Capt. Gillette: I am not, except from the maps.

Capt. Carter: Have you been over the Mud River route?

Capt. Gillette: I have not.

Capt. Carter: Have you been over the other route?

Capt. Gillette: I saw the dredge work on Route 2.

Capt. Carter: Do you consider yourself familiar with the local conditions as a man who has been on the works for years?

Capt. Gillette: Certainly not.

Capt. Carter: Do you personally know anything con-
441 cerning the influence of Wright's river, in connection with the flow across Tybee Knoll?

Capt. Gillette: I take the testimony from your subordinates.

Capt. Carter: Have you made an examination of that yourself?

Capt. Gillette: Certainly not, have you?

Capt. Carter: I have. Do you know of your own knowledge whether the construction of dam 31 across Turtle island is necessary?

Capt. Gillette: I have an opinion.

Capt. Carter: May not a man have an opinion concerning something which he knows nothing about.

Capt. Gillette: Certainly.

Capt. Carter: In connection with the affidavit of Marion Twiggs, referring to the building of mattresses according to the designs and specifications, I would like to submit a report of May 10, 1897, in which he says, "Seven brush mattresses of the third design, 22,900 square yards, were sunk"; also report from Marion Twiggs of June 30, 1897, stating that three brush mattresses of the third design
442 were sunk; June 20, 1897 eight brush mattresses of the third design, were sunk in the jetty; June 11, 1895, seven brush mattresses of the third design, were placed in the jetty:—1st, 1897, that eleven brush mattresses of the third design were placed in the work; July 10, 1895, six brush mattresses of the third design were sunk in the work; Feb. 28, 1897, that one brush mattress of the third design was sunk; Feb. 20, 1897, that two mattresses of the third design were

sunk; Feb. 11, 1895 five brush mattresses of the third design were sunk; March 31, 1895, six brush mattresses of the third design were sunk; March 20th, four brush mattresses of the third design were sunk; March 10 that three brush mattresses of the third design were sunk; May 31, that nine brush mattresses were sunk; May 20th, 1897, that five brush mattresses were sunk; April 10th, five brush mattresses of the third design were sunk; May 1st, that six brush mattresses of the third design were sunk; May 10th, that seven brush mattresses of the third design were sunk. It is stated in all those reports of Mr. Twiggs that those mattresses used were as provided for by the specification and according to the third design.

Capt. Gillette: Col. Haines asked Marion Twiggs how he accounted for the fact in the face of those reports, and
443 he stated that on the face of the reports there was a column headed, "Designs of Mats"; that these reports were on this arbitrary form and to explain the matter he put above the word "Three" the word "Brush." The third design is used there in a Pickwickian sense. The word "Brush" was put there for Capt. Carter's information, as he would understand it.

Capt. Carter: I understood and my assistant understood, that the mattresses were being built according to the third design. The word "Brush" would indicate the third design. I would also like to submit his statement in which he reports the mattresses standing up properly, which statement was denied.

Capt. Gillette: You are mistaken about that, they were standing up in the Savannah river, but not in Cumberland sound.

Major Adams: I suggest that Capt. Carter make his statement, and then Capt. Gillette make his.

Capt. Carter: I also submit several reports of Feb. 11th; recommending that the mattresses be placed in certain spaces, "believing it to be best" Also report of April 8th, Capt. Gillette stated that the loss was entirely due to compression and not to subsidence, and in a report of March 23, 1897,
444 he says, "The bottom is scouring off and filling in after the mattresses are sunk.

Capt. Gillette: Marion Twiggs told me that the mattresses were so shrunken, and the volume had been so decreased, as to make them enormously expensive, costing $13.69 per cubic yard.

Capt. Gillette: Capt. Carter has introduced a lot of reports here, and I would like to know whether it is necessary to have copies of them made.

Capt. Carter: I dont think it is at all necessary, I think that all I require is in the record.

Capt. Gillette: Is there any other evidence from the files that you wish to use in your defense?

Capt. Carter:—I would like to have blue prints of everything that has accompanied those reports from Mr. Marion Twiggs. Also copies of all of those matters that have been taken up by the Board, so that I can examine them in the presence of the Board.

Capt. Carter:—Did you suggest that I be not given access to my private papers?

Capt. Gillette: I said that no one should be allowed to
445 enter that room until the Board came.

Capt. Carter:—Did you not detain those things in disobedience of orders from the Chief of Engineers, prior to receiving that second telegram, giving me authority to hold them?

Capt. Gillette:—I did nothing in disobedience of orders.

Capt. Carter: You received a telegram from the Chief of Engineers, giving me access to the records, and a second one denying it?

Capt. Gillette: In explanation of why I took that step, I will state that at 10:30 o'clock on the night that your secretary, or the Nicaragua Commission clerk, came to Savannah, he came to this office at 10:30 P. M. and demanded the key of the room and of your house. I told him I had nothing to do with your house, but that I had the key of the room in my possession, and I would not turn it over to him. Then I put a watchman over in that room. I put Mr. Austin over there, and he states that at three of half past three the following morning, a man came to the room door, and he called out asking who was there, and received no answer. The man started to run and he threatened to shoot, and the man got away. I telegraphed that latter fact to the Chief
446 Engineer, in the interim between those two telegrams.

Capt. Carter: Was that man sent by you?

Capt. Gillette: He certainly was not. I will state further that Mr. Austin told me that the next day he said to Mr. Connolly, "What did you come up to that room for last

night?" and he said, "That was not me—why, yes, I came up for the key.

AUSTIN, recalled:

Capt. Gillette: Will you detail to the Board the event which occurred concerning that room, 23 in the other building?

A At ten o'clock or shortly after that, perhaps eleven, I was put in charge of that room in the other building by Capt. Gillette. I had a mattress and cot brought up there. I occupied that cot. I heard the hours strike up to three o'clock, and about three o'clock or shortly after, between three or four, I was roused from a doze by hearing some one coming up the stairs. I waited until he got to the top of the stairs, or almost to the top of the stairs, when I called out to know who it was; I said, "Who is that?" and I received no answer. I got 447 up out of bed and called again, and as I called this person, whoever he was ran down stairs, and I ran down stairs after him, and hurt myself at the foot of the stairs, at the foot of the third landing on the iron step, being in my bare feet. The next I saw of the person he was running down Bryan street towards Bull.

Capt. Gillette: Did you have any conversation with Mr. Connolly after that?

A I met Mr. Connolly on Bull St., and Mr. Connolly passed the time of day with me, and spoke about different matters, and I asked him, I said, "What were you doing in the building last night?" and he said, "That was not me," then he said, "What building"? and turned the conversation off. He couldn't have meant this building, as I had seen Mr. Connolly up here that same night.

Capt. Carter: He came up to see Capt. Gillette and saw him in the hallway; was there anything in that conversation which would lead you to believe that it was the other building?

A Not necessarily so. He may have meant this building, but I dont see how he could have said, "It was not me."

Capt. Gillette: What possible explanation could you have for his saying, "It was not me," if he did not mean that building?

A I could not give any. He certainly knew that I saw him here.

Q Do you know any reason he would have to deny his presence in this building?

A No, he could not deny his presence here. I said to you the next morning that I was pretty certain that it was not Mr. M. A. Connolly. I knew from having been associated with Mr. Connolly, that it was not he.

Q Did he give you the impression of knowing that some one had been there?

A That might be an important question. Probably I might have arrived at that impression.

Capt. Carter: Do you think you necessarily derived that impression?

A Not necessarily, no sir.

Q You say that as you know Mr. Connolly, it might be some one else?

A I know it was some one else.

Q Any special person?

A No sir, I could not tell, but I think it was a white man.

449 A Have you any idea that it was any special person who came up there for any special purpose?

A No sir, I did not. I did not expect anybody to make me a visit that night, and I was very much surprised when come one came up.

Col. Gillespie: Are any of those rooms occupied on that floor?

A There is a room just below on the next landing, and it is occupied by the gentleman who sleeps there.

Capt. Gillette:—Is the light on the lower landing usually lit?

A I understand that the watchman puts it out at twelve o'clock. It was put out that night.

Major Adams: Had you at any time any objection to the records in that room you are speaking of, coming into the possession of the Board?

Capt. Carter: Not the slightest, except that there are one or two memoranda, as I explained to you, which might involve two ladies, and even that I had no objection to going into the hands of the Board privately and personally. I may say
450 this, that I did have objection to anything of mine coming into the hands of Capt. Gillette, because I felt that

I would not receive any fairness or justice from Capt. Gillette. I didn't know what might be done with my papers, rightly or wrongly. I have received from Capt. Gillette no receipts for any funds or for any property nor have I received from him any letter of any description concerning the things turned over to him.

Capt. Gillette:—I receipted for the property and funds from you the day I got here, without even checking anything.

Capt. Carter:—Mr. Cooper says that none of those mats were made according to the designs in the specifications. Here are several reports which show that they were built according to the specifications. April 4, 1897; Oct. 8, 1897;—that should be 1896—and April 20, 1897.

Major Adams: (Referring to reports mentioned by Capt. Carter) Where did you find that statement made?

Capt. Carter:—"Design of Mat?

Major Adams: "Built according to specifications."

A The third design.

Q What we want is the record, you should say just what you find there?

A Well, built according to the third design.

Major Adams: Why not put, that which is there, 451 "Design of Mat three." You ought not to add that.

A "Design of Mat Third" should be in each case, it should be instead of "The third design." April 20, 1897, there is a report in the handwriting of Mr. Daniels, signed by Mr. Cooper, made by Mr. Cooper, which refers to design of mat 3rd—I dont think it is necessary to go through with all of these, I simply want to show this generally.

Major Adams: I think what you have is enough.

Capt. Carter: I would like the Board to examine the physical condition of the work.

Col. Gillespie: Is there any part of the work above water that the Board can see?

A Not in the last two contracts, that is all under water. The other is above water. If there is any question as to the condition of the work, or as to its successful accomplishment, I would like to have the Board see it.

Capt. Gillette: There is no doubt that the depth of water that you claim, has been obtained in Savannah harbor. I have no engineering objections to any of the mattresses that have been put in.

Capt. Carter: The question then is the divergence from
from the specifications, the idea being that the specifi-
452 cations ought to have been different if those mattresses
were constructed?
Capt. Gillette: Yes sir, and the question of paying enormous prices for the mattresses used

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Col. Gillespie: Capt. Carter, is there any necessity for the Board staying here longer?
Capt. Carter: I dont think so.
Major Raymond:—You stated that we could not see any of the work done under the last contract; the work previously done has been in position for a considerable time.
Capt. Carter: Yes sir.
Major Raymond: Could the Board by examining that previous work determine anything which you think would be to your advantage?
Capt. Carter:—I think they could determine by seeing the previous work that the new work will be approximately the same.
Col. Gillespie:—Was not the work of a different character?
Capt. Carter: The mattresses were of the same character.
Col. Gillespie: But for an entirely different purpose, one was on the bar and the other on the river?
453 Capt. Carter:—I know that one is a jetty and the other a training wall, but for the purposes of construction, they are practically identical.
Major Raymond:—What I want to get clear in my mind is whether Capt. Carter considers it to his interest that we should go and look at the work that was constructed under the previous contract, the success of the work not being questioned.
Capt. Carter: I feel that the work constructed under the previous contract is so satisfactory to myself that there is no necessity for the Board seeing it, but if the Board is not satisfied of that, I would like them to see it.
Major Adams: How much time do you desire to prepare the testimony of facts which you desire to submit to the Board?
Capt. Carter: I cant tell, because there is a great deal of testimony here, which may have escaped my memory. I can't tell, really.
Major Adams: Can you do it in a week?
Capt. Carter: I should think so, it is very hard to tell.

Major Adams:—Do you prefer to have the next meeting here?

Capt. Carter: No, I think New York will be just as satisfactory.

Major Adams: I think that practically settles the case.
454 If you desire it to be here, let it be here. Is that perfectly satisfactory to you?

Capt. Carter: That is perfectly satisfactory.

Col. Gillespie:—You can notify me by telegraph when you are ready to go on.

Major Adams: I think Capt. Carter should have as many days as he wants to prepare his testimony. When I asked him the question whether he could do it in a week, he did not say that he could.

Col. Gillespie: The Board is at your convenience, Capt. Carter.

Major Adams: If Capt. Carter wants ten days or two weeks, I think he should have it.

Capt. Carter: I may be able to do it in that time, or maybe in less. I can determine a little later.

Major Adams: Do you desire the Board to remain here during that interval of two weeks?

Capt. Carter: I am very familiar with all the local conditions, I know where all the brush is obtained, and where all the logs have been obtained. The character of the brush seems to be called in question, and the only reason I would wish the Board to stay here, would be if they desired to look into that matter.

455 Col. Gillespie: Is there any important reason why the Board should stay here?

Capt. Carter: No sir.

Col. Gillespie: You have full and free latitude to examine any papers that you want to in the office. Notify the Board when you will be ready to appear before them at a point selected by you, it will be entirely satisfactory whether we meet at Savannah or New York.

Capt. Carter: That will be perfectly satisfactory to me.

The Board adjourned subject to call.

TESTIMONY BEFORE BOARD OF OFFICERS.
VOLUME 2.

M. 2.

STENOGRAPHIC REPORT
of
AN EXAMINATION BY A BOARD OF OFFICERS OF THE ENGINEER CORPS
at New York, N. Y., October 12, 13,
and a part of October 14, 1897.

Frank L. Stevens, Stenographer,
Engineer Office, U. S. Army,
Army Building,
New York City.

(Stamped)

Office of Engineers
War Department.
22530

79
Nov 13, 1897

(Stamped)
Office of The Secretary
War Department
2653

3
Oct 11, 1900

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Stenographic report of an examination by a Board of Officers of the Corps of Engineers convened at New York City, October 12, 1897, by virtue of general orders No. 32, headquarters Corps of Engineers, September 17, 1897.

The Board convened for the taking of testimony and the hearing of evidence at ten A. M. on October 12, 1897, at the Army Building, New York City.

Present:

Colonel G. L. Gillespie, Chairman.
Major Charles W. Raymond.
Major Henry M. Adams,
who constitute the Board of Officers and
Captain O. M. Carter, and
Captain Cassius E. Gillette
and the stenographer.

COLONEL PETER C. HAINS was called to the stand and examined as follows:

By Colonel Gillespie:

Q Colonel, you are the Division Engineer of the southeast division in which Savannah and Cumberland Sound lie, and the Board has called you for the purpose of getting what information you may have in regard to the work that was constructed there during the time that you was Division Engineer, or the time previous to your assuming charge of
459 that Division. You are familiar with the specifications issued by Captain Carter for the improvement of Savannah harbor and Cumberland Sound under advisement dated June 6, 1892, are you not?

A To a certain extent, yes.

Q They call for three different types of mattresses?

A Yes.

Q Are you sufficiently familiar with the cost of such work on the South Atlantic Coast from Charleston to the mouth of the St. John's river to know whether the cost of these several types is relatively the same?

A All those three types mentioned in the specifications?

Q Yes.

A Well, I don't know that I am sufficiently familiar to state what the difference would be between the different

types, but I should say that there would be considerable difference.

Q Were you a contractor, could you have known from the specifications without personal conference with Captain Carter what type he expected to use, and could you have intelligently bid without such conference with Captain Carter?

A No, I don't think I could. I would have to bid on the highest type of mattress; that is the one that cost the most.

Q Was it right and proper for Captain Carter to ask for only one price for all types?

460 A I should say not.

Q Are you familiar with the type actually adopted and constructed by Captain Carter?

A No I am not familiar with it. I know in a general way the kind of mattress that was used and know that from the statements of his assistants; but I did not know from observation.

Q Did you at any time see what was represented to be one of these mattresses?

A Yes, I saw a mattress being constructed at Cumberland Sound and I also saw mattresses constructed for the Savannah river.

Q Do you think this type that you saw was cheaper to the contractors to construct than any of the other types mentioned in the specifications?

A Decidedly cheaper.

Q Do you think it right and proper for Captain Carter to have adopted and constructed this type without the knowledge of the Chief of Engineers?

A No.

Q Do you think such a modification was provided for by the specifications?

A No, I think that the specifications provide for certain modifications but I don't understand that any such modification was agreed upon.

461 Q Had you known that Captain Carter was building a type of mattress not mentioned in the specifications would you have conceived it to be your duty to notify the Chief of Engineers of the fact?

A Yes, I would.

Q Do you think it right and proper for Captain Carter to have adopted this type and then authorized its construction without first having agreed upon a price reduced to correspond with the diminished cost of construction?

A I do not.

Q The price actually paid by Captain Carter for the type adopted by him was $1.10 per square yard. Are you sufficiently familiar with the cost of construction of this class of work in that locality to express an opinion whether the price paid was reasonable or excessive?

A Well, I should say the price was excessive, but I don't know whether I am sufficiently conversant with the cost of that style of mattress to make that statement absolutely as a truth.

Q Had you found out by one of your inspections that Captain Carter was building a mattress not provided for in his specifications at an excessive cost, would you have conceived it to be your duty to report it to the Chief of Engineers.

A Yes, if I had noticed that fact I would of it not, to
462 the Chief of Engineers, I would have at least called Captain Carter's attention to the fact that the mattresses were not being constructed according to the specifications.

Q The specifications say that the quantity of mattress work required for canvassing bids for Savannah harbor would be 350,000 square yards. Do you think it right and proper for Captain Carter to increase this quantity to 1,360,000 square yards, the quantities of the other materials being correspondingly reduced, without the knowledge of the Chief of Engineers?

A Not without the knowledge of the Chief of Engineers, no.

Q The specifications say that the stone to be used for sinking the mattresses shall have a specific gravity of 2.4. Captain Carter accepted, used and paid for stone having a specific gravity only a little greater, if any, than 2. Do you think it right and proper for Captain Carter to have done so without the knowledge of the Chief of Engineers and in equity to other possible bidders who had no means of knowing that such a concession would be made.

A No, I don't think he should.

Mamor Adams:

Q Do you know of any disappointed bidders who did not know that that concession was to be made?

A I do not.

463 *Cross-Examination by Captain Carter.*

Q I would like to ask this question. You stated Colonel, that you thought that the three types given there varied considerably in price?

A Yes.

Q Would you have confidence in the judgment of men who have done that sort of work for a great number of years, competitors, and in no wise interested whatever in the company who had this bid as as to what they considered the relative value of these three types of mattresses—men of character?

A I don't think the opinions of anybody would alter my own as to the difference in value of the three types of mattresses.

Q Do you not think though, that men who have actually done this sort of work and know what it costs, do you not think that their opinions would be of value?

A Most certainly, they would be.

Q Suppose, Colonel, that there was a difference in price, but every bidder understood what was to be used. Would there be anything unfair then to the men who did not get the contract if they knew as well as those who did what type was to be used? In other words, if they bid on the same type, would there be anything unfair?

A If they bid on the same type there would not be anything unfair; but, the specifications distinctly say the Engineer may select any one of three types and in my opinion there is considerable difference in those types. I don't know whether that answers your question. What I want to get at is this—

Q Hardly, Colonel. If two men, competitors, bid on the same thing understandingly, even though, in your opinion there might be a difference in the types, is there anything unfair in that competition?

A Well, I should not regard it as fair to call for a certain thing to bid on with the expectation that something else was to be furnished.

A Oh no, not at all. Suppose they bid on the thing actually furnished, was there anything unfair in that?

A Do I understand you—

Q Suppose there are two men, competitors for a certain thing. Both of those men understand exactly what is to be

used and bid on the same thing. Is there anything unfair in that?

A But they bid on something that was not to be used.

Q Oh no.

A That is the case.

Q Oh no.

A I cannot understand the question if they don't bid
465 really on something that is to be used.

Q What I mean is this: if two contractors bid on an article which is to be used and it is used, is there anything unfair then?

Major Adams:

Q I would like to invite the attention of the Board right here to the fact that Captain Carter has already testified that he did not intend to use the articles specified.

A (Captain Carter) Major, you are mistaken, I intended to use one of those types and of that all those bidders had been informed. If you will pardon me, Major, I intended to use one of those types and the bidders were informed of that.

Major Raymond:

Q I understand that Captain Carter wants to know whether if all the bidders understood that a certain thing was to be bid upon, although it was not expressed definitely in the specifications, whether there was anything unfair to those who did not get the contract.

A (Colonel Hains) Well, I don't know, there might be. You are making a hypothetical case.

Q (Captain Carter). No sir, I beg pardon, Colonel, I am making an actual case.

(Colonel Hains) Well, as a matter of fact as I under-
466 stand it, three types of mattresses were specified and were bid on. That is so, is it not?

A. (Captain Carter). Yes sir. As a matter of fact, the plans were made for the third type of mattress, which was the type used.

(Colonel Hains) But I don't understand what the other two types referred to were put in the specifications for?

(Captain Carter) I put them in for this reason, Colonel: in some of the old work there was log mattress work and in some of the places where I thought flexible mattress was needed, I might use some of the second design; and I desired to have the United States obtain what few mattresses might be required of those two types at no extra cost to the United States, the number being so small as to make no difference

in the price to the contractor. I don't know whether I make myself clear.

A I think I understand what you mean. Well, then the question you want answered is this:—

Q (Captain Carter) I want simply to find out if everybody understood and bid on the same thing, was it unfair?

A I cannot understand how anybody could bid on the same thing—

A (Captain Carter) Well, as a matter of fact, they did and—

A If an Officer could tell who the bidders were all to be, but how many people were there who did not bid at all
467 after they saw the specifications? You could not really communicate with every person who intended to bid.

Q Well, as a matter of fact, Colonel, would any contractor bid on a large amount of work, say $2,000,000 in an exposed place on an ocean bar in a dangerous place like Cumberland Sound, without looking into the matter, either in person, or by one of his agents?

A No, I should think not. I should think a contractor would be very foolish under those circumstances not to look carefully into the matter.

Q These specifications went through your office, did they not Colonel?

A Yes. Which specifications are you referring to?

(Captain Carter) July, 1896.

A Yes, they went through my office.

Q You were aware that I had prepared them in this manner, were you not Colonel?

A Yes, I should have known.

Q Well, I most certainly thought you did. It was not with any intention of keeping it from you on my part.

A Well, the specifications passed through my office.

Q And you state, Colonel, that you think a type enormously cheaper than the type mentioned, was actually used?

A I did not say enormously.

Q Well, a type cheaper than the type mentioned was
468 actually used.

A Yes.

Q Suppose a type not cheaper than the one mentioned, the third design, varying, however, only in minor details, such change being provided for in the specifications themselves, would that have been improper?

A That I don't think would have been improper provided an agreement had been made with the contractor as provided in the specifications?

Q Do not the specifications distinctly state, Colonel, that such an agreement shall be made in case only of a variation of the price?

A Exactly.

Q Suppose there is no variation in cost and the change is minor and provided for in those specifications, is it necessary to report such minor changes any more than it would be the method of sinking a mattress, whether by one method or another?

A It does not seem to me that that was the case.

Q In view of those facts, would it have been necessary to report those changes if made under those circumstances?

A I think where there is a material change in the specifications involving a considerable difference in the cost, I think it should be reported to the Chief of Engineers.

Q Yes sir, but that is not an answer to the question, Colonel. I say, suppose it does not make any difference in the cost, and the change is very slight, involving no increase nor decrease—

(Colonel Gillespie) Don't you think you are bringing out the question of your discretion in the matter, rather than—

(Captain Carter) If you will pardon me Colonel—

Major Raymond: It seems to me that Captain Carter's questions are rather important.

(Colonel Gillespie) I don't see that they bear upon the case at all.

Major Raymond: In my opinion it is clear that they do.

(Captain Carter) If I may state this, I don't want anything except the truth of this matter, Colonel.

(Colonel Gillespie) It should be brought out by direct questions, Captain Carter.

(Captain Carter) Can I see if I can make this a little shorter, Colonel? Colonel Hains stated here, Colonel, in reply to your question that he did not think it would be right and proper without the knowledge of the Chief of Engineers to change a type of mattress and introduce one which was somewhat cheaper, and I asked him if—I said—I think you will find that Colonel Hains' reply states that it is a cheaper type and I wanted to find out if it is not a cheaper type.

470 (Colonel Gillespie). Ask the question.

Q (Captain Carter). If the type adopted was not a

cheaper type and varied from the rigid design only in minor details, such changes from that being authorized in the specifications themselves, would it be necessary to report such minor changes to the Chief of Engineers?

(Colonel Hains) If it was a minor detail I should think not. I would like to say though, in reference to that, that I don't regard this, the change that took place actually, as a minor detail by any means.

(Captain Carter) The question was asked, Colonel, whether it would be proper to do this without any reduction in price, to make the change. Suppose the cost to the contractor in completing this work were not reduced, would there have been any necessity for a supplemental agreement with him, the changes being provided for in the specifications?

A I don't think the matter of cost affects the question so very much. There was a radical change in the specifications, that is, in the type put in, as I understand, from what the specifications described.

Q If you will pardon me, that is where you are in error, Colonel, there was not a radical change and that is the reason why I asked this question.

A Well, I don't know about that. I only say one or two mattresses that were used in the whole work.

471 (Colonel Gillespie:) Captain Carter says that the eight cour[illegible] mattress as represented on the tracing before the Board is false.

(Captain Carter) That is false.

Q You were asked, Colonel, if it was proper for me to have increased the amount of mattress work from 350,000 square yards to over a 1,000,000. square yards without the knowledge of the Chief of Engineers. Suppose that were reported in writing to him and to the Division Engineer every month, is not that sufficient notification?

(Colonel Hains) I should say not, because a report of that kind would not be noticed if it was in the Report of Operations. Such a report would not be noticed.

Q Ought it not to be?

A I don't think, Colonel, that is the question this Board is investigating.

Q Having made my written reports to the Chief of Engineers.

A You mean monthly reports?

Q I mean my monthly reports.

A I would not consider that as proper, because that might not be noticed in that shape.

Q Well, Colonel, what is the object of those monthly reports, then?

A Well, I don't know as it is necessary for me to an-
472 swer that question, Captain. That is going off into matters that don't seem to be pertinent to this case.

Q You were asked if calling for stone of a specific gravity of 2.4, it was right and equitable to disappointed bidders to have used a lighter stone. Suppose all bidders bid on the stone actually used and the 2.4 was an error by the chemist who determined the specific gravity, would there be anything unfair in that?

A O, but if an error like that had occurred I think it should have been brought to the attention of the bidders.

Q Suppose they all understood that and bid actually on the class of rock intended, would there be anything unfair?

A Each bidder you mean is bidding on the same class of rock, if each bidder bids on the same rock there can be nothing unfair to any of them as a matter of course.

(Colonel Gillespie) Captain Carter, you don't mean to use language contrary to the evidence, there is evidence that there is some question of an error by the chemist, but, it is a matter of your own inspector's report that lighter stone was used, and it is in evidence. When was that report submitted?

A It is in the evidence, I don't know when it was submitted.

Q Is it in the records?

A Do you mean that it was reported to me before I left Savannah?

Q I think so.

473 (Captain Carter) I think that is an error.

(Colonel Gillespie) The point was the question of the lightness of the stone was not determined alone by the chemist, it was determined by the inspectors as well.

(Captain Carter) I knew the kind we wanted and it did not occur to me that there was an error in the specific gravity until this came up.

(Captain Carter) You were asked, Colonel, whether the price of $1.10 per square yard for mattresses was reasonable or not at Cumberland Sound. You know the conditions of exposure at Cumberland Sound.

(Colonel Hains) Well, let me understand that. I was asked

if $1.10 was a reasonable price for what you used for mattresses. Which one of the mattresses?

Q I don't know what the question was.

(Colonel Gillespie Reading The Question).

The price actually paid by Captain Carter for the type adopted by him was $1.10 per square yard. Are you sufficiently familiar with the cost of construction of this class of work in that locality to express an opinion whether the price paid was reasonable or excessive?

Captain Carter. You said, I believe, Colonel, that you had not examined carefully the details of construction of one of those mattresses.

(Colonel Hains) A. Yes.

474 Q Could you form an accurate idea of its cost without such a personal familiarity with it?

A I think I might form a tolerably accurate idea without ever seeing one, provided I knew how it was constructed.

Q I don't think that there is anything else that I want to ask.

(Colonel Gillespie) Do you know what the price of a similar mattress built in 1894 was, built in the same locality?

A I believe it was 57 cents a square yard.

(Captain Carter) Is that the cost to the contractor, or the cost to the Government? Did it cost the contractor that, or did it cost the Government that?

A I don't know anything about what it cost the contractor, that is what the Government paid as I understand it.

(Captain Carter) Was not the cost of mattress work in the project for Cumberland Sound estimated at $1.00 per square yard—I mean in the report of the Board of Engineers?

A I don't remember.

(Colonel Gillespie) I asked Captain Carter the question whether the mattress that was bid for and which was estimated for in the report, to which you referred, was the one which was constructed?

(Captain Carter) Yes sir, I made both estimates.

(Colonel Gillespie) Is it the one the Board understood?

475 (Captain Carter) I think it is the one they understood. It is the one I intended them to understand.

(By Captain Gillette)

Q Did Captain Carter explain to the Board when they

made this estimate of $1. per square yard, that this eight course variety of brush mattress was to be used?

(Captain Carter) That has nothing to do with the case.

Q Yes sir. It has. I submit that Colonel Hains understood better what the Board understood than Captain Carter. Is that your idea that that big mattress of eight courses was to be used?

(Colonel Hains) Most emphatically not. I did not understand it that way.

(Captain Gillette) As a matter of fact, it is eight mattresses.

(Captain Carter) Well, there is where I differ with you.

(Captain Gillette) Did the Board understand that, anything like that system of construction was to be used when it made its estimate at a $1. per square yard?

(Colonel Hains) I dont know what the Board understood, I know I did not.

(Captain Carter) The kind I intended was the kind I used. Whether I went into the details of that, I don't remember, but being familiar with it myself, I may not have mentioned that to the Board. That I don't remember. I want to 476 state further that whether there should be one course or eight courses was in my mind immaterial, because whether I put one mattress down or whether I put eight depended entirely upon the depth of water and how quickly the sand would fill.

(Captain Gillette) Did you in any one instance use only one mattress?

(Captain Carter) Not in the present contract. I have in other contracts.

(Colonel Gillespie) Did you in any one instance use two mattresses?

(Captain Carter) During the present contract in Cumberland Sound I don't think I did, because when I left there we had not put the work in shoal water; it was in deeper water.

CAPTAIN WILLIAM M. BLACK, was called to the stand and examined as follows:—

By Colonel Gillespie.

Q Captain Black, will you please state to the Board your service in the improvement of the St John's river and the adjacent locality, and the dates on which that service was rendered?

A I was placed in charge of the Florida District in April or May of 1886, and remained in charge of that District
477 until November of 1891.

(Colonel Gillespie) What was the character of the work that you did at the mouth of the St John's river?

A The construction of jetties, consisting of mattresses and stone.

Q What was the character of the mattress that you used in that construction?

A In 1886 the mattress was of the design which had been used by General Gillmore on all of the works. Two designs were called for, one of them consisting of a layer or raft of logs covered with brush. The second design I don't remember so clearly. It was more brush, but it was never used. That was used under the first contract made under me. I have some notes of that Colonel; if I may get them, in the other room, I can remember probably.

Q We just want the general design?

A But it proved unsatisfactory. During the continuance of that contract I first tried two or three mats in the north jetty, consisting of a log raft alone, without any brush. That was also unsatisfactory, and by authority I obtained permission to construct a supplemental mattress of brush over fascines, made after the design of a contractor, M. R. G. Ross, and two or these were put in so that when the contract for 1888 was let, the fascine brush mattress was the only one
478 called for. In 1888 this mattress consisted of a grillage of poles at the bottom spiked together. On that was a closely compacted layer of brush fascines, which were made so that the fascines should be continuous for the entire length of the mattress. The brush was laid in carefully so as to break joints and it was specially provided that there should be a sufficient quantity of brush, so that when choked by the ordinary form of military choker and bound at intervals of two feet, there should be solid wood to the diameter of 9

inches at the points where bound. It was choked down at intervals of two feet until it was solid. On this layer of fascines was placed a second layer of fascines, spaced at intervals of 6 feet, and placed at right angles to the bottom layer. On top of this was placed another gillage of poles similar to the bottom grillage. The fascines of the lower layer were jammed together by heavy layers as they were placed laterally. When the top grillage was placed on, the ropes which had been attached to the corners of the lower grillage were drawn up through, hauled tight to the full breaking strength of the rope, by a lever and made fast to the intersections of the top grillage. The mattress was made on ways close to the shore. When ready for placing, which would depend upon the state of the weather and the stage of the tide, the mattress was launched as short a time as practicable before the time of placing in the jetty for the reason that
479 the free floatation was so exceedingly small that the mattress had to be held up on the water by attaching it to barges on the sides, or by placing floats over it. It was then taken out, swung in place over the jetty and lowered away, being covered with stone as it was being lowered.

Q Was it the invariable custom to sink these mattresses separately and cover them with stone?

A Invariably.

Q Do you remember what the cost of such a mattress per square yard was in place?

A Yes, the cost of construction on share was from 50 to 55 cents, the cost in place ranged in the neighborhood of 60 to 65 cents.

Q Have you seen the specifications issued by Captain Carter for the improvement of Savannah Harbor and Cumberland Sound, issued under advertisement of June 6, 1892?

A Yes sir.

Q They call for three different types of mattresses, do you know from your experience in the St John's river and vicinity whether the cost of these several types is about the same, or whether there is a variation of grade?

A The cost of the second design of Captain Carter's should have been practically the same as the cost of the design used on the St John's river.

Major Raymond: It would make no difference in what
480 place it was to be? U mean the cost of the mattress in place—would it cost more to put it in place in Cumberland Sound than it would in the St John's River?

A I cannot say as it would. As I recollect, the difference in towing did not amount to much.

Colonel Gillespie: How about the third type?

A The third type should have cost about the same as the second, the difference being that in the second type, as in the type in the following contract, the 1890 contract, for the St. John's, the top and bottom grillages could be made of one layer of poles only, instead of being square. In Captain Carter's third design, the top and bottom grillages were to be of two layers of poles, but the top layer of fascines at intervals of 6 feet was omitted, so that it would amount to about the same thing.

Q You mean that the cost of the second and third types were about the same?

A They ought to have been about the same, Colonel. I have not made any figures on it. There could not be much variation.

Q Having read the specifications which I refer to, were you a contractor, could you have known from the specifications without personal conference with Captain Carter, of the special type he expected to use, and could you intelligently bid without such conference?

481 A No sir.

Q Could you have intelligently bid, after he had informed you verbally of the design he was going to use?

A I should have had to bid under the specifications and should, therefore, have had to protect myself by bidding for the mattress of the highest cost.

Q Had you been the constructing officer, would you have thought it right and proper to ask of the bidders only one price for all these three types?

A No sir.

Major Raymond: I object, Colonel, to the question.

Colonel Gillespie: If an officer had not had experience in that kind of work, I should have thought your objection pertinent.

Major Adams: As I understand it, Mr. President, that was the reason he was called.

Colonel Gillespie: Had you been the constructing officer would you have thought it right and proper to have adopted and constructed a type of mattress different from what the specifications called for without the knowledge and authority of the Chief of Engineers?

A No sir.

Q Taking the specifications as they are written, had you been the constructing officer, would you have thought it right and proper to adopt this type and authorize its construction without first having agreed upon a price reduced to
482 correspond with the diminished cost of construction?

A No sir. The specifications expressly forbid that.

Q The specifications say that the quantity of mattress work required for canvassing bids for Savannah Harbor would be 350,000 square yards, had you been the constructing officer would you have thought it right and proper to increase this quantity to 1,360,000 square yards, the quantities of other required materials being correspondingly reduced?

A No sir.

Q Would you have deemed it sufficient to have made a report of this increase by a monthly report alone, or would you have deemed it necessary to make a special report direct to the Chief of Engineers upon the subject?

A I should have deemed it a radical departure from the terms under which the contract was let and, therefore, requiring special authority.

Q The specifications state that the stone to be used for sinking the mattresses should have a specific gravity of 2.4, would you, as the constructing officer, have deemed it right and proper to have accepted, used and paid for stone of less specific gravity without the knowledge of the Chief of Engineers?

A No sir. The same stone was used on the St John's river and in the last contract particularly stone was
483 brought down and weighed, and when it did not come up to the specific gravity required, or nearly so, the contractor was given the option of removing that stone, all that was faulty, or of placing it all in the jetty and receiving pay for what we deemed to be the portion of good stone in it; as for instance, if we deem that 75 per cent of that total amount was good stone, he was given the option of weeding out the stone that was faulty or of putting the entire amount in the jetty and receiving pay for 75 per cent of the total amount of stone used.

Major Adams: Are you familiar with the kind of a mattress used by Captain Carter on the Savannah River?

A No sir, I have never seen them excepting from the specifications.

Q Are you familiar with the kind of mattress used in Cumberland Sound?

A No sir, I have never seen them, excepting the log mattress which had been used in the earliest contracts.

Q I would like to have Captain Carter state what he used at Cumberland Sound?

Captain Carter: Very well, what I used was the third design of brush mattress with the following modification: that when these mattresses were built, one mattress on top of another, the bottom grillage of the upper mattress was omitted and the top grillage of the mattress underneath used, the
484 amount of fascines being increased to make an equivalent of the poles which would have been put in that grillage. Do you want to know why I left that second grillage out in building these mattresses on top of one another?

Q Yes.

A The reason why I did that is this: when I put these mattresses one on top of the other, if I had a grillage here the top grillage of the bottom mattress, the bottom grillage of the top mattress coming on it, left in some places where there was a pressure of water against it, work more open than I desired, and in order to get closer work to facilitate silting or sanding up, I wanted to avoid this space. Therefore, I required the contractor to put in fascine work, which was closer and omit that extra grillage. That is why I did it.

Q I would like to ask the witness one or two questions. Do you understand the form of construction as stated by Captain Carter?

Captain Black: Yes sir.

A Can you give us an estimate of the cost per square yard of mattresses of the kind described by Captain Carter when placed in position as stated, eight courses at a time?

A I have the figures, but I can't give them to you without getting my figures and working them out. I have never worked them out.

485 Q How long would it take to do that?

A Fifteen minutes maybe.

Q I should like to have that at some time, if you can arrange to give it to us after the examination ends?

A I have a detailed cost of all the intricate parts of the mattress that we made and it would be a simple matter to make it up.

Colonel Gillespie: As I understand this, it combined a construction of eight courses of mattress and a single covering of stone?

A That is it.

Q And how many tons of stone per mattress was used?

A That I don't remember, but my object was to use just as little as I possibly could.

Q Don't you remember the limit?

A I do not. I limited it in this way—

Q Can you give the approximate limit?

A I don't think I can for Savannah harbor, whether I gave that limit in Cumberland Sound I am not sure.

Colonel Gillespie: Can't you give us an approximate estimate?

A The amount of stone necessary to hold eight of those mattresses, one on top of the other, each mattress being, say 100 feet wide and 50 feet long, would be from 125 to 200 cubic yards.

486 Captain Carter:

There is very little difference, Colonel, you can hold eight of those mattresses down there with just about the same amount of stone that you could hold a single mattress.

Colonel Gillespie: In your bids you asked for 200,000 cubic yards of stone for 350,000 square yards of mattress.

Captain Carter: That is an entirely different thing, Colonel.

Q Would not that give you your average for the entire width?

A Oh yes, for the finished work.

Q I am speaking of putting it in place?

A My method has always been to put the foundation in as many mattresses on top of one another as I needed in place at once. In order to facilitate this work, rush it, as little stone as was necessary to hold this in place was used, the object being to finish with the foundation work and then convert everything into stone work and then bring up the amount of stone necessary on top of that.

Q The record is actually that you used the 1,360,000 square yards of mattress and you used 127,000 cubic yards of stone.

A Well, that was in Savannah harbor.

Q And in Cumberland Sound you used about 446,000 yards of mattress and 11,000 yards of stone?

A That is the foundation. All the rest of the stone

487 has got to get on there.

Q The point was, as I understand it, that you diminished your quantity of stone on the mattresses to prevent the sinking of the mattress into the sand?

A That was simply for sinking.

Q And if that be true then, there was some time or other when that mattress has to sink.

A Not necessarily, I hoped this: I hoped that this mattress would fill with sand and then when the mattress work was filled in with sand it would be in condition to support its load of stone without compression; whereas, if the entire load of stone had been put on the mattress immediately before the interstices had been filled with sand, there would have been very great compression.

Q I will dismiss the subject with one more question, that is, this operation of sanding up did not occur as you had expected?

A Oh yes, but I had the Cumberland Sound work watched very closely.

Q Do you know what the actual result was?

A It was reported by the engineer that it sanded to the crest.

Major Raymond: I want to ask Captain Black a question or two. You said that the cost of the mattress in place varied from 60 to 65 cents?

488 A Somewhere in that vacinity, Major.

Q Was that the actual cost of construction?

A Yes sir.

Q So that if you were going to make an estimate to do a piece of work by contract, of course you would load that actual cost for the contractor's profit and risk, and his insurance, interest on the plant, and the other expenses which always have to be taken into consideration in determining a contract price from the actual cost?

A Yes sir.

Q About how much would you load that to get a reasonable price?

A I have always deemed the contract price under Ross, 75 cents a square yard, as a fair price.

Q If you were receiving bids upon a piece of work like that, would you draw the line at 75 cents, at which you would recommend the bill as a reasonable one, or might you put it a little higher?

A I might put it a little higher, because I think there was a very small margin at that price. The last contractor had it at 70 cents and he really failed.

Q When you get bids on that sort of work don't you find as a fact that they vary a great deal in price, or in every

kind of work, in fact, don't you find that the bidders will
489 vary in their bids within pretty wide limits so that the opinion of one man with respect to the cost would be very different from that of another man, although they are both experienced?

A The work down there was a little peculiar because there are a very few bidders and I don't remember that there was much variation. It was a work that was considered dangerous to a contractor, a risk work, and we did not have at the mouth of the St. John's river very many bidders.

Q One man bidding on that kind of work would want to allow more for the risk, which was an uncertain quantity?

A That seemed to be a function for the experience of the contractor.

Q So that in bidding on that kind of work the price might range from 75 cents to $1.25 without creating any astonishment?

A I should not have let the bid at the major price.

Q You might have let it at a dollar?

A I might have.

Q Or a $1.10?

A That would be near the limit.

Q You speak of this price which would be practically 75 cents per square yard for your St. John's river work. About what difference in cost would there be between that and the first type, the log raft covered with brush?

A Twenty five to thirty cents a square yard.

(Colonel Gillespie: You were a member of the Board
490 of Engineers in December, 1895, and prepared a project for Cumberland Sound?

A Yes sir.

Q It is stated in evidence that Captain Carter proposed to use and made an estimate in that report for the type of mattress which he has actually constructed under the contracts we are now considering. Did you understand that such a mattress would be used?

A No sir.

Q For which a bid of $1. was estimated in the report?

A No sir.

Major Raymond: What kind of mattress did you understand that the Captain was to use?

A The type that was used at St. John's River.

Q The type that was actually used at St. John's?

A Yes sir.

Q At the time of the adoption of that report, did you think the estimate was too high of $1. a square yard?

A I thought they were high enough, but not too high.

Colonel Gillespie: I want to call your attention to a part of the testimony here in which your name is mentioned and have you confirm the same by your own testimony?

A Yes sir.

Q Captain Carter, as a witness, (Colonel Gillespie reading from page 401 of the stenographer's minutes),

"Q Did you report in your monthly report to the
491 Chief of Engineers the days that you were absent without leave?

A I don't know whether I did or not; I don't believe I did.

Q If you had reported that you were absent without leave, do you suppose that you would have been called upon to explain it?

A No sir, because I always told it at Washington in coming back. I remember once Captain Black came in and said 'Look here, I am going to call you down, you and Bixby and a lot of others have been going around without leave and I am going to call you down.'"

Q Do you remember any such conversation?

A No sir, not at all.

Q (Captain Carter) Don't you remember at one time, I think it was in 1895, when I had been going off occasionally without General Craighill's knowledge, don't you remember you said you were going to stop it or call me down?

A No, I don't think I ever said that for, when I was in the Chief's office I was very careful to say that I was not going to do anything. I do remember this, however,—that when it became known in Washington that you and others were absenting yourselves from your stations without leave, I reported the matter to the Chief of Engineers and on the basis of that report a circular was issued requiring officers to state in their monthly reports all the days of their absence from their stations and the authority for the absence.

Q I can remember that too. I think I feel very sure about the conversation?

A Well, I don't think I ever used those terms.

Q Well, the exact impression might have been a mistake, but the fact that we did have such a conversation I feel very sure of.

A Well, I don't know. I would not like to say that it is so or it is not so.

Colonel Gillespie: Do you mean to—

Captain Carter: I mean this, Colonel; until Captain Black came there I had been for some time previous, I have forgotten just when, occasionally absent without permission, and I remember from a conversation with him that it was going to be stopped and was stopped. I don't remember the exact language for that I may have gotten wrong, but the fact that we talked it over, I remember.

A Well, that may very possibly, be correct.

Q Of course, if I have gotten the verbiage wrong, I am willing to rectify it, whether you said it or not, I am not sure but that is my recollection.

(Captain Carter continuing: You were speaking about your contractor Mr. R. G. Ross. Do you consider him an experienced contractor in whose opinion you would have confidence?

493 A Yes sir.

Q You stated that your mattresses were invariably sunk in single layers, with stone on top of each layer?

A Yes sir.

Q Would it have been possible in the water or practicable to have sunk those, the several mattresses on top of one another at once, could you have floated them out, with the method you had?

A No, they would not float, I don't think.

Q Suppose you had a very soft bottom, where the load on the mattress sunk your mattress down and you wanted to hold your mattress there until it would fill up with mud or sand and stay there. Would you have felt it your duty in a case of that kind, if you could have devised a method of sinking your mattress, one on top of another, by lightening the load of stone to get that result, to have done so?

A I would not say that. That is an exceedingly theoretical question, inasmuch as I have never known a brush mattress to sink at all in the sand and if a case comes up in which it had been necessary to make a modification I should certainly have asked for authority.

Q For a modification in the method of sinking a mattress?

Q A modification as radical as that.

A Modification that materially affects the cost to the contractor.

Q That is true if it does affect the cost to the contractor. Suppose it does not affect the cost to the contractor, would
494 it make any difference then? You say that made a difference in cost to the contractor, would you ask for authority on these minor modifications as to how you would sink your mattresses. You would not consider it necessary to have authority if there were no change in cost to the contractor?

A I would not consider it necessary to have authority to sink a mattress directly from ways on a barge rather than to tow it out and sink it. That has nothing to do with the construction of the mattress or with the construction of the jetty.

Q Would you consider it necessary to ask for authority to change the amount of stone that you found was necessary to hold a mattress down. Suppose you found that you used 6 inches, suppose you found that it was settling and you could get along with two inches. Would you consider it necessary to ask for authority to make this change in building up your mattress?

A That would depend entirely upon my project.

Q Suppose the methods of construction were left to you, the Engineer officer in charge. Would it be necessary to report this modification?

A You mean that I had not any form of construction of jetty approved?

Q No detailed approved form, but you should have a foundation course of mattress and loaded that with stone?

495 A I always made my project so definite that there was no doubt, and I cannot answer that question.

Q You were asked, had you been the constructing officer, would you have thought it proper to adopt a type reduced to agree with the diminished cost of construction? Would you have considered it right and proper to have adopted this modified type and authorized its construction without first having agreed upon a price reduced to correspond with the diminished cost of construction? If there had been no diminished cost of construction, would it have been necessary to agree upon a new price?

A I consider that type of mattress totally different from the mattress authorized.

Q That is not the question I asked. I asked this: whether it would be necessary to agree upon another cost, another

price when there was no change. It was asked, was it right to agree to this, to permit this, to go ahead without an argeement as to the reduced cost when there was no reduced cost? Suppose there was no reduced cost, would that agreement have been necessary?

A If the agreement as to price was if there were any change in cost, no modification of the contract might have been necessary; but as the method of construction of the jetty was radically changed, authority for such modification from the Chief of Engineers would have been necessary.

496 Q What was this modification? You said there was a modification?

A How full do you want me to make this answer?

Q You say you have not seen any of these mattresses constructed and I want to know what makes you think there was a radical change in the method of construction?

A When the Board on Cumberland Sound was in consultation, the question of the number of mattresses and the thickness of brush mattress to be used in the jetty was considered and, as I supposed, settled, that the jetty was to have no brush in the jetty proper, but only in the foundation course, and aprons. As I recollect the conversation we had then, I desired in the report to state that this foundation must consist of but one course of brush mattresses. I think that I was overruled there. But the Board itself in its ultimate jetty cross section has spoken, has provided only for a foundation strictly of brush, the jetty proper being built upon a hearting of all light stone covered with heavy stone.

(Colonel Gillespie) Was that the mattress work that was contemplated to be built at $1 per square yard?

A Yes sir.

(Captain Carter) As a matter of fact, it was estimated 425,000 square yards of mattresses approximately in the project?

A I don't remember now.

497 Q I think the length of jetty to be covered was about 6,000 feet—Well, the exact figures are immaterial. What I want to find out is this: the length as I remember it, over which those mattresses had to extend was about 6,000 feet. Was it not absolutely necessary in order to have arrived at that yardage, that there must have been several courses of mattresses?

A That is not as I understood it. The figures were taken from your estimate.

Q Well, my estimates were made on that basis. Whether you understood it that way I don't remember.

Colonel Gillespie: Was there a cross-section of the mattress that was to be erected before the Board? Any drawing?

Captain Carter: No sir, I think not. There may have been but I don't remember any such. I don't think there was.

Colonel Gillespie: Did the Board send with its report any drawing?

Captain Black:

A I think not sir.

Captain Carter: I estimated for a number of courses of mattresses in this foundation, as the yardage will show. Whether I made that clear to the Board I cannot say. It appears now from Captain Black's testimony that I did not, but I thought I did and it would have been very simple to have seen that by taking the yards that there must have been several courses intended for this foundation course, with-
498 out the stone.

Colonel Gillespie: I don't understand yet how you could have signed that report with one provision made for only one course of mattresses, when you had in mind eight courses?

A I did not make any provision for one course in the Chief of Engineer's report.

Colonel Gillespie: (Reading from the Annual Report of the Chief of Engineers for 1896 at page 1,292).

"The following type of jetty is proposed; the foundation and apron courses should be of brush mattresses 100 feet in width and loaded with riprap stone. The ultimate jetty section should be composed of a foundation of brush mattresses, with a load consisting of a hearting of small stone covered with heavier stone. In going seaward the covering stone should increase in weight from 1,000 lbs. to five tons as the low water depth increases from zero to 12 feet. Beyond that depth still heavier stone should be used. The side slopes should be as steep as such stone can stand. An ultimate crest width of ten feet at mean high water is sufficient."

Colonel Gillespie: That was my idea of the way they should be built. Is that correct?

Captain Carter: Mattresses for as many courses as I

needed for my foundation, and that was to be laid with stone. That was what I made estimates on.

499 Q Your mattresses extend all the way up to the top of the work?

A Oh no sir, that is only the foundation, Colonel. The stone has to go on top of this.

Q How would you get your hearting in there?

A It would come in later on top of this foundation.

Q How high was that foundation to be according to the design you had in your mind?

A The foundation of brush? It was variable, depending on how high the sand would fill.

Q Give us an approximate height?

A About 8 feet, but my intention was to bring it to any height the sand would fill.

Q How high was the jetty to be?

A The jetty was in some cases 12, 18 and 20 feet. I don't remember now, but there was quite a good deal of water in some places there.

Q I did not get that idea from the report at all.

A I thought the language was clear. I think so yet. If I failed to make it clear to the Board it was my mistake.

Captain Black: When I tried to make a jetty of absolutely a single thickness of mattress in the foundation there may have been some mention made of two courses, Colonel, I don't remember with certainty, but my whole impression and the whole intention in this report and in this cross section—and I supposed the Board was a unit on that—was to

500 make a jetty that had no more brush in it than could be avoided.

Q You did not contemplate a foundation rising to 8 feet in heighth?

A No sir.

Captain Carter. We disagreed absolutely I remember on the amount of brush to be used and Captain Black's idea was as little brush as he says, and my idea as much as the sand would fill.

Q Do you wish us to understand that you carried the Board as against Captain Black on that principle?

Captain Carter: I thought I did, that was what I was pleased with about the report, but of course I may have been mistaken.

Q Was Colonel Hains a member of that Board?

A Yes sir, Colonel Hains was.

By Captain Gillette: Was the idea of using 16 brush mattresses of this type, one on top of the other, ever discussed before the Board?

A Never.

Q Here are three photographs of two mattresses, one of one mattress and one of two others. Which of those would you consider to be the mattress contemplated by Captain Carter's specifications?

A (Pointing) That would seem to be the one.

Q Is that practically the mattress that you built at St John's River barring the single course of fascines?

501 A That I cannot tell. That would depend upon the construction of the fascines themselves, with which we had more trouble than with any other one thing.

Q Judging from those two photographs, assuming the same area on the bottom, would you consider that this mattress in the work was worth to the United States eight times a single course mattress?

A On the contrary, I consider it worth less.

Major Adams: You mean the eight course mattress worth less than the single course?

A Yes.

Captain Gillette: All of those eight courses you considered worth less than the single course?

A Yes.

Q That is the first mattress which I inspected at Cumberland Sound, built under Captain Carter's instructions? I was in charge but had never seen the work or issued any instructions whatever, that was built and paid for as eight mattresses, it was 7.9 feet in heights and so loose that I went in nearly to my waist in trying to walk across it.

Major Adams: Mr. President, will you permit Captain Black to give us in connection with his estimate of the mattress as constructed by Captain Carter, another estimate of the cost of the mattress "described by Captain Gillette and shown in this photograph?"

Captain Black: There would be one difficulty about
502 that, Major, and that is this, that my estimates are for tightly built fascines that were jammed closely together, requiring a certain number of fascines to the square yard, and of course you can see if the fascines were not so made and jammed, it makes a vast difference in the amount of material in them.

Major Adams: We have your estimate of the cost of your

work, 65 cents per square yard. We want to get, if we can, an estimate of the cost of the mattress described and built by Captain Carter; next, the cost of the mattress described by Captain Gillette and shown in this photograph.

Captain Gillette: I can give you the proportions of materials used in that mattress in that photograph and the materials in the photograph of this one, which you say was according to the specifications, from weighing them.

Captain Carter: It seems to me, if I may be permitted to state, Colonel, that this method of weighing this material when the idea was not weight but bulk, the whole idea of the thing, and when this is a mattress which I have not seen, and the truth of falsity of which statement that it is an average mattress I am not advised—in view of other false statements of the witnesses upon whom testimony is based—it seems to me that this is hardly a fair proposition to make, to have an estimate on that mattress as described by Captain Gillette.

Colonel Gillespie: The weight of the two types is governed by the relative quantities of brush in each type.

503 Captain Black: We will suppose that the conditions were the same, the brush was cut at the same time.

Captain Carter: I mean that the conditions were not the same and the brush was cut six weeks before it was used, in one case.

Colonel Gillespie: I think those estimates can be gotten under equal conditions.

Captain Carter: Yes, I can give them.

Colonel Gillespie: Suppose you take Captain Black out and give them to him.

Captain Carter: You were speaking about the stone, that you would not allow it to go in, of less specific gravity than mentioned without the knowledge of the Chief of Engineers. You were paying for your stone by the ton, were you not?

A Yes sir, by the ton 2,000 lbs.

Q Suppose you were paying for stone by the cubic yard and it was your intention to get that Florida stone and the stone came up to what you wanted to use in that work. Would you have deemed it necessary to have determined the specific gravity of each load?

A No.

Q You stated that when stone did not come up to the specifications, the contractor was allowed either the option of putting it in without pay, or weeding it out?

A Yes sir.

Q If you were buying stone by the cubic yard that would be done in the same manner? You would pick out the
504 stone and if it did not come up to the specifications, reject it or give him his option?

Captain Black:

A We judged of the stone largely by its appearance and by handling it and without weighing definitely each piece.

Captain Gillette: Which would you consider most disadvantageous to the United States to accept stone too light bought by the cubic yard, or stone that was too light bought by the ton?

A If the stone is heavy enough to stay in place, the greater the bulk obtained for the same money, the more advantageous, other qualities of durability being equal.

Captain Carter: Suppose you were paying for it simply by bulk, then does it make any diffeernce? I mean when stone is good enough to go into the work and you are paying for it by bulk?

A There are good and bad qualities of stone, and the contractors bid higher or lower by the carefulness with which the specifications are going to be carried out, and I think in all cases of that kind the contractor who does not get it is bound to have you enforce your specifications fairly; that you are bound in fairness to enforce your specifications.

Colonel Gillespie: Is specific gravity an important item?

A Yes sir, but when I said I would not weigh in every case, I think I put in a good deal of stone that was somewhat lighter than we specified.

Captain Gillette: Do you consider it fair, wanting
505 Florida stone, to put in specifications which would take only a very small percentage of Florida stone, practically to require a contractor to put in granite or other heavy stone in case you chose to enforce the specifications? Would that be fair to the bidders?

A To be perfectly frank I think it is exactly what I did. When I first weighed the Florida stone I found that I could get it at 145 lbs. to the cubic foot, and I don't believe that I was ever able to get it or that it was to be had after the first contract, and I think after that, that while I rejected the very poor stone, the bulk of the stone ran under 145 lbs. and I think in later years, if I mistake not, they have modified the specifications, as calling for a stone that could not be had.

Captain Gillette: When did you modify those specifica-

tions? About when were they modified, to bring them down to stone that could be had? About what year?

A I don't know, I have not followed that up.

Q How long have you been away from there?

A Since 1891. We began using the Florida stone in 1886.

Captain Carter: You said awhile ago that as near as you could judge you picked out what you wanted and let it go in there and the question came up in my mind when you are paying for that stone by the ton, suppose you are paying for that simply by the cubic yard; is it as necessary to determine the specific gravity of that? When the stone is of the kind specified, is it necessary then to determine the specific gravity?

506 A Just simply to determine that it comes up to the specifications; that is all.

Q I had a sample measured and I assumed that to be Florida stone. Since I have been away the determinations show that Florida stone doesn't reach that specific gravity, but as I was paying for it by bulk, by the yard, as everybody bid by the yard, if the stone came up to what you wanted, would it have been necessary to determine its specific gravity?

A I would say no, modifying my statement by judging from its appearance and handling it.

Colonel Gillespie: When Captain Carter says the stone you wanted, he means the best you could get there?

A Yes, and the best the contractor could get. It was the best to be had, Colonel, of its variety.

Captain Carter: I found it to be the best in the work.

Colonel Gillespie: When you call in your specifications for 2½ specific gravity and accept a stone below 2, you accepted that because it was the best you could get?

Captain Carter: There is a great deal of difference in the stone that was there, but just what its specific gravity is I don't know.

Q In the execution of your contract you tried to live up to your specifications 2.5, but in order not to delay the work you agreed to accept something less than that because
507 it was the best you could get? Is that it?

A Yes sir.

By Captain Gillette: You did reject large quantities of Florida rock?

A Yes sir.

Q Captain Carter did not.

COLONEL PETER C. HAINS was re-called to the stand and examined as follows:

By Colonel Gillespie:

Q The Colonel desires to be recalled in order to answer the question which Captain Carter put to him when he was on the stand before relative to the specifications as prepared by Captain Carter, passing through his hands on their way to the Chief of Engineers. Colonel, you are now to be heard on that question.

A I understand that Captain Carter asked me if I approved the specifications. I don't remember what my answer was, but it was to the effect that they passed through my hands. They were not approved by me and I would like to read the indorsements I put on the specifications that were sent through my office. The specifications, I think, were dated June 4, and on June 6 I put on this indorsement. This is for Savannah River:

508 "1st Indorsement,
U. S. Engineer Office,
9 Pleasant Street,
Baltimore, Md.
June 6, 1896.

Respectfully submited to the Chief of Engineers. I have no official information that an appropriation for this work has been made, nor have I any that the specifications have been drawn in accordance with an approved project.

Attention is invited to the following:

Par. 34 seems to be a change in the form prescribed by the Department. Orders require when any change is made the reason for it must be given.

Par. 39, last part—2nd and 3d line from bottom—is not understood.

Par. 40. There is nothing to guide the bidder as to length of haul. The place of deposit is to be somewhere at a locality to be approved by the Engineer, but if it is one mile, one price would be bid, and if it was ten miles the price would be greater.

Par. 44. Prices for stone are by the ton in some cases and in others by the cubic yard. I would prefer all to be by the ton, but Captain Carter may have some reason for the difference which I do not know.

Par. 49. Last part not understood.

509 A circular is referred to in the form of proposal, but it is not clear what the circular is.

These papers are submitted to the Chief of Engineers at the request of Capt. Carter, who it is understood will see him personally on June 8 in regard to them.

Peter C. Hains, Col., Corps of Engineers, U. S. A., Div. Engineer, S. E. Division."

Colonel Hains: That was my indorsement on the specifications that he sent in for Savannah River so that you see that I did not approve them.

Colonel Gillespie: The Chief of Engineers was General Craighhill?

A I think so.

Q Did the Chief approve them?

A I don't know. There were some things that passed through my office after that, I expected he must have approved them, but the records don't give, apparently, every thing that took place.

Now in regard to the specifications for Cumberland Sound, I put on this indorsement:

"1st Indorsement,
U. S. Engineer Office,
9 Pleasant Street,
Baltimore, Md., June 6, 1896.

510 Respectfully submitted to the Chief of Engineers. I have no official information that the work contemplated is provided for by law, or that a project for the expenditure has been approved. The specifications, however, are defective in the following particulars.

1. On the fourth page there is printed matter evidently intended to be stricken out, but has been overlooked.

2. On the next page (5)—description of third design—at line 14, something has been omitted and must be inserted to make sense. The whole paragraph seems to be duplicated in part, and confused.

3. Par. 44 (Prices), page 8, does not accord with form of proposal on page 12. In one case the price is stated to be 'a price per cubic yard for third-class stone' and in the other, 'For third-class stone ..... Dollars and ..... cents ($.....), per ton of 2,000 lbs.' In my judgment both third and fourth-class stone should be bid for by the ton and not by the cubic yard, as well as the first and second classes.

4. Par. 44, has an evident error on the third line tons meaning pounds.

I submit these papers to the Chief of Engineers at the request of Captain Carter, who has informed me that he expects to be in Washington on Monday, June 8, and wishes to see the Chief of Engineers in regard to them.

PETER C. HAINS,
Col. Corps of Engineers, U. S. A.,
Div. Eng. S. E. Div."

Colonel Hains: That was the indorsement I put on the specifications. Subsequently I don't know what took place. There were some more indorsements and they came through me again. This is my endorsement, the fourth:

"4th Indorsement,
U. S. Engineer Office,
9 Pleasant Street,
Baltimore, Md.
June 15, 1896.

Respectfully submitted to the Chief of Engineers. These papers now seem to be all right, but as stated in the first indorsement, I have no official knowledge of the appropriation having been made and no project for the expenditure has yet passed through this office or been approved.

PETER C. HAINS,
Colonel, Corps of Engineers, U. S. A.
Div. Eng., S. E. Div."

Colonel Hains: Now, a project was afterwards approved, that was dated June 15, 1896.

Colonel Gillespie: What was dated June 15, 1896?

512 A This last indorsement. On July 7 this passed through my office, a letter to Captain Carter reading as follows:

"Subject: Savannah Harbor.

Office of the Chief of Engineers,
United States Army,
Washington, D. C., July 7, 1896.

Capt. O. M. Carter,
Corps of Engineers,
Savannah, Ga.

Captain:

Your letter of the 4th ultimo, to the Chief Clerk of the War Department requesting authority to publish advertisement and print specifications for improving Savannah Harbor, Ga., has been received and I have to advise you that

consideration of these papers is withheld in this office pending the approval of a project for the work.

No action is being taken at present on projects for continuing contracts authorized by the act of June 3, 1896.

By command of Brig. Gen. Craighill:

Very respectfully, your obedient servant,

A. MACKENZIE,
Lieut. Col., Corps of Engineers.

Through Col. Peter C. Hains,
Corps of Engineers,
Division Engineer, Southeast Division.
15,553.

513 Colonel Hains. And that was transmitted to Captain Carter. (Reading).

"1st Indorsement.

U. S. Engineer Office, 9 Pleasant Street, Baltimore, Md.
July 8, 1896.

Respectfully transmitted to Captain O. M. Carter, Corps of Engineers, U. S. A.

PETER C. HAINS,
Colonel, Corps of Engineers, U. S. A.
Division Engineer, Southeast Division."

Colonel Hains: Now on June 22nd that is the next in order, Captain Carter submits through me this project for expenditure in Savannah River:

"Subject: Project for Expenditure—Savannah Harbor, Ga.
United States Engineer Office.

River and harbor improvements and fortifications in Georgia and Northeastern Florida.

Capt. O. M. Carter,
Corps of Engineers, U. S. A.,
in charge.

Savannah Ga June 22, 1896

Brig. Gen. Wm. P. Craighill,
Chief of Engineers, U. S. Army,
Washington, D. C.
(Through Colonel Peter C. Hains,
Corps of Engineers, U. S. Army,
514 Division Engineer, Southeast Division,
Baltimore, Maryland.

General:

In compliance with your letter of instructions of the 19th inst., I have the honor to submit the following project for the

expenditure of $5,000 appropriated by Act of Congress of June 3, 1896, for "Harbor of Savannah, Georgia: Continuing improvement."

The Act referred to provides further: "That contracts may be entered into by the Secretary of War for such materials and work as may be necessary to complete the project of further improvement recommended by Captain O. M. Carter in his reports of December seventh, eighteen hundred and ninety-four, and July first, eighteen hundred and ninety-five, and to complete the project for the steamboat channel between Beaufort, South Carolina, and Savannah, Georgia, recommended by Captain O. M. Carter in his report of December fourth, eighteen hundred and ninety-five, and mentioned in that report as route two; to be paid for as appropriations may from time to time be made by law, not to exceed the amount of one million dollars, exclusive of amount herein or heretofore appropriated."

The projects referred to in this Act contemplate (1) the extension of the Cockspur or Oyster Bed training wall, (2) the construction of a detached portion of the latter for the
515 purpose of sheltering the anchorage in Tybee Roads and protecting the channel, (3) the maintenance of the existing channel depths in the harbor and (4) the opening of a steamboat channel seven feet deep at mean low water between Savannah, Georgia, and Beaufort, South Carolina, which latter is to be accomplished by connecting dam number 31 with Turtle Island and by dredging Ramshorn Creek and at the mouth of Wrights River.

The cost of the above work was estimated at $1,148.950, provided all operations were completed by July 1, 1897, and at a sum greater by $50,000 for each year thereafter required for the completion of the work. The Act of June 3, 1896, which provided that the Secretary of War shall not obligate the Government to pay more than $400,000 in any one fiscal year, increases the necessary cost of the improvement to $1,248.950, which is $243,950 more than the total sum for which the Secretary of War is authorized to enter into contract.

The locality is well worthy of the improvement contemplated by the authorized projects, but the limit of cost should be extended to that required for completion.

No work has ever been done by the United States on the inside route between Savannah, Georgia, and Beaufort, South Carolina.

The condition of the improvement in Savannah Harbor is given in detail in my last Annual Report.

516 Work under the existing contract in Savannah Harbor will be completed about July 15, 1896, and the balance available, which will be about $15,000, together with the $5,000 made available by the Act of June 3, 1896, will be required for engineering and contingencies.

The United States owns no suitable plant for executing the work and any work done should be done by contract, as provided in the Act of June 3, 1896, that method being more economical and advantageous to the Government.

All work should be done according to the projects approved by that Act, which are given in my reports of December 7, 1894, February 4, 1895 and July 1, 1895 to which I respectfully refer for details.

Very respectfully, your obedient servant,

O. M. CARTER,

Capt., Corps of Engrs., U. S. A."

Colonel Hains: Copy for me, Colonel Hains. That is June 22, 1896. Now June 26 on that project I put this indorsement:

"1st Indorsement,

U. S. Engineer Office, 9 Pleasant Street, Baltimore, Md June 26, 1896.

Respectfully submitted to the Chief of Engineers, U. S. A.

517 In view of the fact that the work is estimated to cost '$243,950 more than the total sum for which the Secretary of War is authorized to enter into contract' it is obvious that a contract for completion cannot be legally made at this time, and one for a part of the work is not authorized.

PETER C. HAINS,

Col., Corps of Engineers, U. S. A.

Div. Engineer, S. E. Division."

Colonel Hains: On August 11 the Chief of Engineers sent through my office this letter:

"Subject: Savannah Harbor, Georgia.

Office of the Chief of Engineers United States Army.

Washington, D. C. August 11, 1896.

Capt. O. M. Carter,

Corps of Engineers,

Savannah, Georgia.

Captain:

Your letter of June 22, last, submitting project for expenditure of appropriation made by the River and Harbor Act of

June 3, 1896, for harbor at Savannah, Georgia, was duly received and submitted to the Secretary of War with endorsement of which the following is a copy:

518 '2nd Indorsement.

Office of the Chief of Engineers,
U. S. Army,

August 3, 1896.

Respectfully submitted to the Secretary of War.

The River and Harbor Act of June 3, 1896, in the item appropriating $5,000 for continuing improvement of harbor at Savannah, Ga. provides:

"That contracts may be entered into by the Secretary of War for such materials and work as may be necessary to complete the project of further improvement recommended by Captain O. M. Carter, in his reports of December seven, eighteen hundred and ninety four and July first, eighteen hundred and ninety-five, and to complete the project for the steamboat channel between Beaufort, South Carolina, and Savannah, Georgia, recommended by Captain O. M. Carter in his report of December fourth, eighteen hundred and ninety-five, and mentioned in that report as route two; to be paid for as appropriations may from time to time be made by law, not to exceed the amount of one million dollars, exclusive of amounts herein or heretofore appropriated"

This provision of the Acts is based upon reports submitted by Captain O. M. Carter, Corps of Engineers, and printed in the Annual Report of the Chief of Engineers for 1895, pp. 1449-1462 and 1521-1525.

The project formerly adopted by Congress for the improvement of Savannah harbor, has been successfully completed under the continuous contract system, and the conditions are now favorable for letting the contracts for the work authorized by the Act of June 3, 1896, on terms advantageous to the Government.

It appears that the interest of Commerce and of economical work, and the necessity of protecting existing depths in the harbor, alike require that arrangements should be made as early as practicable for carrying on the work authorized. I, therefore, recommend that contracts be entered into for the completion of the work, in accordance with the provision of the Act quoted above, and the regulations of the Department.

Under the terms of Section 5 of the Act, the Secretary of War cannot obligate the Government to pay more than $400,-

000 on this work in any one fiscal year, beginning July 1, 1897.

A. MACKENZIE,
Acting Chief of Engineers.

519 The project was returned to this office by War Department endorsement of August 6, "Approved as recommended by the Acting Chief of Engineers in the preceding endorsement hereon".

Very respectfully, your obedient servant,

A. MACKENZIE,
Acting Chief of Engineers.

Through Col Peter C. Hains, Corps of Engineers.
Division Engineer, Southeast Division."
7913

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Colonel Hains: That is August 11. You see there is a hiatus here. Some of these papers did not go through me and some of them did, but the point to which I wish to call the Board's attention was that on October 22, 1896, I put on this indorsement, that is, the indorsement on his letter of October 20, 1896. Captain Carter's letter of October 20, 1896 shows that it will cost $1,248,950 (reading from Captain Carter's letter of October 20, 1896):

"The estimated cost being greater than the sum authorized in the Act providing for the improvement, it will be necessary to leave some of the work in an unfinished condition. I respectfully suggest that the steamboat channel between Savannah and Beaufort be completed and that the
520 works in Savannah Harbor be carried as far as the funds remaining available will permit.

Instructions are requested.

Very respectfully, your obedient servant,

O. M. CARTER,
Capt. Corps of Engrs. U. S. A."

(Now on the 22nd of October, 1896, that passed through my office and I put on this indorsement:

"1st Indorsement.

U. S. Engineer Office, 9 Pleasant Street, Baltimore, Md.
October 22, 1896.

Respectfully submitted to the Chief of Engineers.

The suggestion of Captain Carter would be a sensible way

of going at this work, if it could be done legally. My opinion is, that such a course would not be legal. The River and Harbor Act provides that contracts may be entered into for completion only of the projects, and it would be illegal to make contracts that did not provide for completion within the sum specified by Congress.

Whether contracts may not be made within the estimates and within the sum fixed by Congress, could only be satisfactorily determined by advertising for proposals for the entire work.

PETER C. HAINS,
Colonel, Corps of Engineers, U. S. A.
Div. Eng S. E. Div."

Colonel Hains: The Chief of Engineers indorsed that as follows:

"2nd Indorsement.

Office Chief of Engineers, U. S. Army, Oct. 24, 1896.

Respectfully returned to Captain Carter. It is noted that the estimated cost of work, exclusive of maintenance and superintendence and contingencies, is as follows: 10,500 feet training wall, $945,000. Route 2 $97,000, total $1,042,000.

It is understood that this work, and in addition, 1,125,000 cubic yards of dredging for maintenance are included in the following contracts:

Atlantic Contracting Co	$835,000
Rittenhouse Moore	162,500
	$997,500

It would therefore appear that the prices at which contracts have been made are sufficiently below the prices at which estimates were made to permit of the carrying out of all the work contemplated in the projects adopted by Congress. Under any conditions the law under which contracts have been let would seem to require the completion of the work in Savananh Harbor and on route two, Savannah to Beaufort, and while it may be hereafter considered proper to estimate for maintenance of completed work, it will not be permissible to call for more money for completing each
522 of the works. Any further information Captain Carter desires to present in this connection will have careful

consideration. This paper to be returned through the Division Engineer.

By command of Brig. Gen. Craighill:

A. MACKENZIE,
Lieut. Col., Corps of Engineers.

7913

7

Through Colonel Hains &c.

Colonel Hains: The third indorsement was as follows:

"3d Indorsement.

U. S. Engineer Office, 9 Pleasant Street, Baltimore, Md.
Octo. 27, 1896.

Respectfully transmitted to Captain O. M. Carter, Corps of Engineers, U. S. A.

PETER C. HAINS,
Col., Corps of Engineers, U. S. A.,
Div. Eng. S. E. Div.

Colonel Hains: The fourth indorsement is:

"4th Indorsement.

U. S. Engineer Office, Savannah, Ga., Nov. 5, 1896.

Respectfully returned to the Chief of Engineers, U. S. A. (through Colonel Peter C. Hains, Corps of Engineers, Div. Eng. S. E. Div.)

The estimated cost of the work in Saxannah Harbor 523 and route two being $243,950 greater than the sum authorized by Act of June 3, 1896, proposals for only 9,000 linear feet of training wall were called for since completion was required and the sum authorized would complete only that length.

Should the cost of maintenance be less than estimated, or the work be completed sooner than required, it may be possible to build a greater length of wall than 9,000 feet.

O. M. CARTER,
Captain, Corps of Engineers, U. S. A."

Colonel Hains: The fifth indorsement is as follows:

"5th Indorsement.

U. S. Engineer Office, 9 Pleasant Street, Baltimore, Md.
Nov. 9, 1896.

Respectfully submitted to the Chief of Engineers, U. S. A.

PETER C. HAINS,
Colonel, Corps of Engineers, U. S. A.
Div. Eng. S. E. Div."

Colonel Hains: These are the communications that passed in reference to this matter at Cumberland Sound and Savannah River so that it will be seen that I did not approve of the project so far as that was concerned, and my answer must be qualified.

524 Captain Carter: I had forgotten, Colonel, that you had.

Colonel Hains: The point I made was that the contract for a part of that jetty was illegal and could not be made, and the specifications had been sent in before there had been any approved project and I did not make any approval of them.

Colonel Gillespie: Colonel, in the testimony given by Captain Black, a few moments ago, in the report of the Board of December, 1895, of the Board of Engineers who considered Cumberland Sound, Captain Black says that his own idea was at the time that that report was written, that the project recommended by the Board was a single course of mattresses at the bottom with a superstructure of stone. Captain Carter on the contrary says that it was series of mattresses build according to the design that was adopted at Cumberland Sound, rising even to eigth feet in height.

Captain Carter: Colonel, I think I said this: I said that it was my intention in making the estimates, and I thought the Board understood—

Colonel Gillespie: I asked the question if before the Board you had carried that principle as against Captain Black and you said that you had.

A Yes sir.

Q The Board would like to know whether at the time the Board of Officers in 1895 adopted this project, did they contemplate the use of a series of mattresses built according to the plans which Captain Carter says he built eight

525 courses high and rising to eight feet, or was it a single course covered with a superstructure of stone?

Colonel Hains: Well, I could not say. I don't remember the discussion that took place. I think there was some discussion about it but I don't know what the members of the Board had in view. My idea was that it was principally to be the mattress that was referred to in the first design, a single mattress, and I supposed it would be a log mattress, logs with brush. It is called in here a brush mattress. I suppose that it would be for a part of them, but I don't remember to have had any definite understanding about that.

It was a detail that I thought the engineer himself would carry out, as would appear advisable when he came to the construction.

Colonel Gillespie: It was very clear in your mind at the time the report was written and signed, what the phraseology in that last paragraph meant?

A My idea was that it was a single mattress.

Colonel Gillespie: It says (reading from the Annual Report of the Chief of Engineers, 1896, Part 2, page 1292):

"The following type of jetty is proposed: the foundation and apron courses should be of brush mattresses 100 feet in width and loaded with riprap stone. The ultimate jetty section should be composed of a hearting of small stone covered with heavier stone. In going seaward the covering stone should increase in weight from 1,000 pounds to 5 tons,
526 as the low water depth increases from zero to 12 feet. Beyond that depth still heavier stone should be used. The side slopes should be as steep as such stone can stand. An ultimate crest width of 10 feet at mean high water is sufficient.

Estimates.

425,000 square yards brush mattresses, at one dollar per square yard	$425,000
300,000 cubic yards of second class stone, at $3.25 per cubic yard	975,000
125,000 cubic yards first class stone, at $6. per cubic yard	750,000
Engineering and contingencies	200,000
Total,	$2,350,000

The above estimate provides for building the jetties higher and for extending them farther seaward than was contemplated in the projects of 1879 and 1891.

From a study of the changes which have taken place at Cumberland Sound since the original project of improvement was adopted, it will be seen that the failure to provide funds adequate for the proper prosecution of the work has greatly increased its cost. Should funds be provided in the future as they have been in the past, in inadequate amounts or at irregular intervals, not only will the development of Commerce be retarded but the cost of completing the improvement will be further increased. Should, however, suffi-
527 cient funds be made available to carry forward the work continuously and with proper vigor, the improvement can

be completed successfully in three years and within the estimated cost.

Respectfully submitted,"

(Captain Carter). If you will pardon me, Colonel, as I remember, the principal discussion came up between Captain Black and myself because Captain Black is an enthusiastic advocate of as little brush as possible, while I wanted as much as the sand would fill; and the yardage of course shows conclusively that for the length I must have contemplated a number of courses, otherwise I never could have got that yardage and I thought I made it clear to the Board; and felt gratified that those details were left to me to carry out. If I failed to make that clear it was my fault. I thought I made it clear and thought I had carried the point.

Major Raymond: Would not the number of square yards estimated for in the report of the Board as compared with the lengths of the jetties indicate whether one or more layers of mattress were to be used?

A I don't know.

Captain Gillette: Do you remember, Colonel, who worded that portion of the report?

A I do not.

Captain Carter: I think the whole language is mine.

528 Colonel Hains: I think the whole report, possibly with some changes in the phraseology, was drawn by Captain Carter. The Board left the matter entirely with him to draw. He was requested to draw up a report for consideration.

Captain Carter: I think if you will compare that report of December with my report to the Chief of Engineers of June, you will find them practically identical.

Captain Gillette: Then, if indefiniteness of the wording of this report mislead the Board as to what it was reading, the responsibility would rest with Captain Carter?

Captain Carter: That is a matter that would have to be determined by somebody else.

Q The report is indefinite.

Major Raymond: If the Board wanted a definite report they could ask for it.

Colonel Gillespie: Any other question that you know of? (Continuing)—I think it proper as your name has been mentioned in the proceedings that occurred at Savannah, that the testimony should be read. It is the testimony of Captain Carter. Captain Gillette was the speaker. He says (reading from page 230 of the stenographer's minutes):

"Capt. Gillette: Have you ever visited the work at Cumberland Sound, with the Division Engineer, Col. Hains?

Capt. C. I think I have.

Capt. Gillette: Did he ever see the mattresses as constructed by the Atlantic Contracting Company?

529 Capt. C: I presume he must have seen them.

Capt. Gillette: Do you remember whether he saw one being built on the barge, at the reservation, when Gen. Craighill was here?

Capt. C: I presume he must have seen them, if he was here when the work was being erected.

Capt. Gillette: Do you remember explaining to him whether the mattress he saw on the barge was one mattress or eight, and that you paid for those in layers instead of as one mattress?

Capt. C: I dont remember at this date. The mattresses are about eighteen or nineteen inches thick each, whereas this was enormous; he must have known that this was a combination of mattresses.

Col. Gillespie: When was this?

Capt. Gillette: That was under the present contract.

Capt. C: Some time last winter or in the early Spring.

Col. Gillespie: Less than a year ago?

Capt. C: Yes sir.

Capt. Gillette: The work on the contract began in December 1896? The first brush used on the contract was gotten from the reservation?

Capt. C: I can very readily by referring to my notes. I kept a memorandum of the work. I dont remember now.

530 I remember of his being down here. All this was as clear to me of course, as the sun shining on a bright day, it was in all my reports, but whether I especially explained the matter to him, or whether he asked me, I dont remember.

Colonel Hains: Are those Captain Carter's replies?

Colonel Gillespie: Yes, those are Captain Carter's replies. Have you any comments to make on that testimony?

A It is true that I inspected that work about February, 1897, I think it was, and I saw a mattress being built.

Colonel Gillespie: I might go on a little further and give the testimony: question by Captain Gillette again, (reading from page 231 of the stenographer's minutes).

"Capt. Gillette: Did he know you were paying $1.10 a square yard for each layer?

Capt. C: I suppose he did; that was the contract price.

I presume that he must have known that we were paying it. The new estimate price is a dollar."

Captain Carter: That ought to have been the original estimate price, I think.

Colonel Gillespie: (Continuing)

"Did you have any conversation with the Division Engineer as to the type you were building, and as to your departure from the specifications in building it? Capt. C. I don't remember whether I did or not. When he came down we went on the work, and I showed him the work and how it was being done. I explained this fully to him, whether
531 I explained it to him clearly or not I dont know."

Colonel Hains: As I said I inspected the work and I saw a mat being made on a barge. I don't know how thick it was or how think it was to be when it was finished, but on another occasion when I inspected work in the Savannah River, seeing a very thick mattress on a barge, I asked Captain Carter how much this mattress cost and I got the idea from his answer that it was ninety some cents per cubic yard.

Captain Carter: No, Colonel, I could not have said that.

A. I would not say that you said that. You may have said ninety odd cents a square yard, but it did not convey that idea to my mind because the mattress was a big mattress and I did not see how you could measure it by the square yard and I supposed of course it was by the cubic yard.

Q As I say, I dont remember whether I explained this to Colonel Hains or not, but I took it for granted because the contract price was by the square yard and I took it for granted that Colonel Hains understood that.

A You may have said that. I would not say that you did not.

Captain Gillette: What contract was this?

A The Savannah River.

Q The big contract of 1892?

A I think it was, yes.

Q It is of record that that contract was for brush
532 mattress by the square yard and brush fascines by the cubic yard?

A That is right.

Colonel Hains: This was a heavy mattress made up of fascines and brush, apparently, and I did not go on to the mattress; we passed close by it and I noticed that it was very thick and my impression was that it would not answer the purpose, but he stated that it would answer the purpose better than a thinner mattress.

CAPTAIN DAVID DuB GAILLARD was called to the stand and examined as follows:

Colonel Gillespie: You have served on the South Atlantic coast on harbor and river improvements, have you not?

A Yes sir.

Q Between what dates?

A Between April or May 1887 and November 1891.

Q What work did you have in charge?

A I was in direct charge of St Augustine Harbor and an assistant under Captain Black on the St John's jetty. I had some other dredging work and snag work.

Q Was the work at St Augustine similar to that at St John's River?

A No sir. St John's was all contract and St Augustine all hired labor.

533 Q I mean similar in character?

A Yes.

Q What was the length of your experience upon the St John's river improvements?

A I was there practically—I had experience almost continuously—from 1887 to 1891.

Q Then you knew absolutely the character of the work and its cost as determined by the contracts?

A Yes sir, I did at the time.

Q Have you read the specifications issued by Captain Carter for the improvement of Savannah River for the improvements of Savannah Harbor and Cumberland Sound under advertisement dated June 6, 1896?

A I have read almost all of them. I have read Cumberland Sound entirely and most of the others.

Q They call for three different types of mattresses. Are you sufficiently familiar with the cost of such work, considering your experience at St. John's River and St Augustine, to know whether the cost of these several types was the same or whether they should differ in any way?

A I can only answer from experience in St John's and there they did differ.

Q Which type would cost the most?

A The second type of mattress would cost the most and the third would be practically the same.

534 Major Raymond: The log mat you said?

A The log mat was there the cheapest at contract price.

Colonel Gillespie: Were the specifications for Cumberland Sound which you said you have read, perfectly clear to you as to what Captain Carter desired to get a bid on from contractors? Could you determine which one of the three types he wanted?

A Well, I understood anyone of the three types might be called for. That was the idea, that the contractor might be called on for anyone of the three.

Q If you had been the constructing officer, would you have thought it right and proper to have asked for only one bid for three types?

A I would have asked for separate prices on log mattress independent of the fascine mattress.

Q Do you know the type actually adopted and constructed by Captain Carter?

A No sir.

Q You have had an independent command, have you not?

A Yes sir.

Q Do you feel authorized as a constructing officer to depart in any material way from a project approved by the Chief of Engineers without first informing the Chief of Engineers of that fact?

A Not in a material way.

535 Q The specifications of Savannah Harbor of September 6, 1896, (June 6, 1892), which we are considering, say that the quantity of mattress work required for canvassing bids would be 350,000 square yards. Do you think it right and proper as a constructing officer for Captain Carter to increase this quantity to 1,360,000 square yards, the quantities of other required materials being correspondingly reduced, without the authority of the Chief of Engineers?

A I think that would be a greater increase than I would make without calling attention to it in some way.

Q You understand the question? The specifications call for 350,000 square yards and in construction it was increased to 1,360,000 square yards. Would you have made that increase without the authority of the Chief of Engineers?

A Not so material an increase.

Colonel Gillespie: Anyone else?

Captain Gillette: What was the cost per square yard of the mattress you constructed at St John's River?

A I constructed mine at St Augustine by hired labor.

Q What was the cost per square yard?

A Sixty one and one-third cents in place, exclusive of the stone ballast.

Q How were the fascines made?

A They were 9 inch fascines choked every two feet and bound with number 14 wire. I think it was the ordinary fascine wire.

536 Q Brush trimmed?

A No, no trimmed brush.

Q How were they choked?

A They were choked with the ordinary choker, almost exactly like the military fascine choker. Our handles, if I remember correctly, were possibly four feet long. That is purely from memory of several years.

Major Raymond: Suppose you were going to get that same kind of mattress in a contract, what would you consider a reasonable price, such a price as you could recommend to the Chief of Engineers, for acceptance, per square yard for such a mattress from a contractor?

Q We did get such a mattress and we got it one year for 70 and another year for 74 or 75 cents. I consider both of those reasonable. I think the 75 cents was quite reasonable. It was at the same time I was making this, and it seemed to me that that allowed a fair profit.

Captain Carter: Captain Black stated that the price was 75 cents at the St John's and that there was another contract at 70 cents where the contractor lost money. Dont you think in an exposed place like that that a fair, a wider variation, considering the risk to a contractor, would be permissible than five cents a yard?

A I think a matter of five cents in that case is simply a matter of individual judgment. What I might consider
537 a reasonable profit, another man might not consider it so. This is my individual judgment that 75 cents was reasonable.

Colonel Gillespie: Would you have accepted $1.10 per square yard for it?

A Not after having made the one at St Augustine.

Captain Carter: Would not that depend very largely upon where the mattresses were to be placed, the exposure of the work, the depth of the water, the haul of the material and everything else?

A O, then it would. But I am speaking of St John's bar and St Augustine harbor, Florida.

Colonel Gillespie: Are you familiar with Cumberland Sound?

A I have only been there once.

Q Is it generally considered that that is more exposed than St John's River?

A I cannot say positively what the general opinion as to the two is.

Major Adams: You think the other conditions are as favorable at Cumberland Sound for the making and placing of mattresses as at St John's River and St Augustine?

A I could not say. I have never been out of the city of Fernandina for any length of time.

Captain Carter: The conditions are not as favorable on an ocean bar as they are inside for sinking, to a contractor?

A No.

538 Q Now, with this cheapest mat that you speak of, it is a matter of record that they were lot only a few years ago at Wappoo Cut for $1.10 per square yard, so that, being a more favorable place than an ocean bar, is it not conceivable that there may be conditions where ocean bar work may be let at similar prices and still not be extravagant?

A Well, it might be conceivable that there was such a place, but I have no knowledge of such a place.

Q You were asked if you thought that as a constructing officer you would be authorized to depart from a project in a material way. Suppose the general details under that project were left to you as a constructing officer and there came up minor questions, questions which you considered minor questions of construction, would you not feel authorized to make such changes as that, yourself?

A If the general details were left to me and minor modifications arose in the execution of the work and became necessary—

Q Would you not feel justified in making those changes then?

A If I regarded them as minor.

Captain Carter: The case under investigation is this: The details of the project were left to the Engineer officer in local charge.

Major Adams: Is that strictly true?

Captain Carter: I think it is strictly true.

Colonel Gillespie: I doubt very much if that be true.

539 Captain Carter: I think it is so stated in the project. If it is not I can correct that later These are the words

Colonel, in the project, the approved project of June 30, 1890, under which this contract of 1892 was let (reading from page 1, 261, Annual Report of the Chief of Engineers 1890, Part 2):

"In pursuance of the same object it may be become necessary to close the Northern opening either by continuing the present jetty, number 31, to the shore, or by building a training wall from Long Island Flats to Oyster bed; further to construct a training wall running easterly from the lower end of Cockspur Island and finally to extend and raise the Oyster bed training wall."

Then comes in this:

"For the successful accomplishment of this improvement" —, that is the whole project,—"great freedom of action should be allowed the local engineer, the necessity for the various works and their execution being accompanied and guided by continued careful investigations of the influence exercised by the completed portions."

Major Adams: Does that refer to the location of dikes or training walls at Savannah?

A It refers to Savannah, yes.

540 Q Does it refer to the modification of the contract or of the price paid per yard for work under the contract?

A O no, not if the cost to the contractor is changed. That is provided for in the specifications. In the specifications I have that, but the question was asked, Major, if he would depart from the project; and that is the reason why I asked this question, it was not the other question at all.

Major Adams: The project describes the construction?

Captain Carter: No sir.

Q Does the specification?

A Yes sir, it does.

Q It is the specification and the contract that form the most important part of the investigation?

A This question was asked, Major, and I simply want to find out— it says would you feel authorized to depart from a project in a material way.

Colonel Gillespie: It meant depart from the project under which the specifications were drawn, and your specifications being the guide?

A Well, this was the project under which he—

Colonel Gillespie: But the project I referred to in the

question was the project immediately preceding the application of the money that had just been appropriated.

A That, Colonel, I have not here; it is in my box at Savannah, but I have never stated anything in this project
541 as to methods at all. It was only about how much of the approved project I thought I could with the money. That was all.

Colonel Gillespie: The object of the inquiry was to ascertain from Captain Gaillard what he conceived to be his duty in relation to notifying the Chief of Engineers.

Captain Carter: And the question was asked him if he would feel that it was right and proper without special authority to increase the quantities largely. I would like to ask this: If you were carrying on a work as in Savannah Harbor and you found that it became absolutely necessary to the success of that work that one of the items called for should be increased and another item diminished, and after careful investigation you found that that made no material difference in the price to the contractor, would you not feel that the success of the work being dependent upon that change, you were authorized to make that change?

A No, I would state that to the Chief of Engineers and ask authority for any great departure.

Q But suppose you were carrying along a piece of work and change after change in quantities became necessary and you reported this in writing each month to your Division Engineer and to the Chief of Engineers. The conditions being as stated, first in my question, would you consider that as sufficient?

A I think not for so great a change. If I understand it, it refers to the change that Colonel Gillespie refers to
542 in the quantities, about three times.

Q That is looking back after the work is completed, when neither you nor anyone else could tell before beginning?

Major Adams: Would you not make this question apply to the thing we are looking into? You are making it a general question instead of a special one. You did not report these changes with a view to a modification of the contract. You simply mentioned them in the monthly report. Is that true?

A That is true.

Q Will you explain that?

Captain Carter: I will explain to Captain Gaillard what I did. In Savannah Harbor I made an estimate for a certain

number of square yards of brush and a certain number of cubic yards of stone, those quantities being based upon as careful a study of the River as I was able to make. In carrying out that project scour developed in some places unexpectedly, threatening the stability of the works. It became necessary to put some of those—necessary to stop that scour. This was done. It was successful. In other places the mattresses when loaded with stone sank down to the bottom and disappeared, and then it became necessary to build those mattresses one on top of another in such a way as to economize on the stone and make the load enough to hold those mattresses in place until they could silt up.

Major Adams: Will you state the amount of the in-
543 crease in mattresses?

A Yes, when I get through.

Captain Carter: These changes being brought about by daily experience on the work and being considered by you absolutely necessary for the successful accomplishment of the project, then coming near the mouth of the River, finding that those mattresses would silt up and not be eaten by the torredo and that it would be possible in that soft bottom to use them and thus saving your stone, causing a still further increase in mattress work, such changes being brought about gradually day by day and the amounts used being reported to the Division Engineer and to the Chief of Engineers in writing, and the changes being discussed orally, frequently, with the Division Engineer, and the necessity for them and the difficulty being discussed with him and with other engineers,—could you have foreseen under such conditions as those how much it would have been necessary to increase this mattress work, and the change in the mattress work having brought no increase in profits to the contractor, so far as you were able to determine, would you under those circumstances have made any other report, or do you think it would have been practicable to have made any such reports to the Chief of Engineers and the Division Engineer, the final result having been after four years of this work an increase in the quantity of mattress work of about four times what was originally contemplated? That, however, having determined
544 after the work was over and the necessity for these changes prohibiting your foreseeing what that increase was going to be, having made those reports and discussed the changes with the Division Engineer and feeling sure that while there was large gain to the Government, there was no

resulting gain to the contractor, do you think that you would have acted, probably, any differently from what I did, or are you able to determine it?

A Well, I think I understand this, it is a rather involved supposititious case.

Major Adams: You have not yet stated the increase which you made?

Captain Carter: Yes, I said nearly four times.

Q I would like to have a report showing the amount you canvassed for in bids.

Captain Carter: The amount I asked for was about 350,000 square yards and the amount I used was about 1,350,000 square yards. Coming up after four years of work daily, as I described, struggling to make the work a success but not being able, and no man being able to foretell what changes would be required, do you think under those conditions, is it conceivable that under those conditions, you would have acted differently on your own judgment under the conditions described? Have I made it plain to you how these things come up unforeseen day by day? To meet local conditions there, to save the work there that was going clear down, dis-
545 cussing these things with the Division Engineer every time I got a chance to see him, reporting the case to the Chief of Engineers in writing every month and being satisfied that while there was a chance to save the work it had better be taken, I made the modifications accordingly. I have put you as nearly as I can in the condition that I occupied. Of course it may be impossible for me to do so actually.

Captain Gaillard: Under those conditions, such as have been described, I could see how quantities might have overrun the original estimate very largely; but my own action would have been as soon as those changes promised to be progressive, my action would be to write to the Chief of Engineers that I found from the existing conditions that I was exceeding my original estimate of mattress work in this case, described the condition of affairs to him, urged upon him the necessity of allowing me to do what I thought was proper to preserve the work and gotten his sanction for the change in the design.

Major Adams: Would that have required a change in the contract as well?

A I think it would, except in that contract, if I remember correctly, it was provided that any change in the style of

mattress, any material change could be made by agreement beforehand with the contractor and increasing, as I understand it, or diminishing the price proportionately, if the change was made.

A The changes made as I understand it, did not come
546 under that head.

Captain Carter: It comes under that head, Major, because there was no change in cost. You see that says without a change in cost.

Q Who determined that? Did you invite bids on the thing put into the work?

A Yes. You mean in the original contract, or when this change was made?

Q I mean in the last contract for work at Savannah, Georgia. Did you invite bids on the kind of mattresses that you put into the work?

A Yes, I consider that I did. I made this minor modification of the specifications as I have explained.

Q I understood you to say you explained to the Board that you did not depart from the specifications?

A Oh no. I made this minor modification. It is practically no departure at all.

Q You realize that the charges made by Captain Gillette rest on exacty that modification?

A My understanding is absolutely different from what he states.

Q I would like to ask the witness one more question. Under the circumstances as described, would you have considered it necessary to investigate the question of cost of the kind of mattress put in?

Captain Gaillard: Under the conditions just described
547 by Captain Carter, I would think my whole decision dependent to some extent on the cost of that mattress.

Q Before making the change then, he ought to have investigated the question of cost?

A I think most decidedly the question of cost is a most important one.

Q And if it appeared that the mattress substituted would cost less, you would consider a supplemental contract necessary profiding for that?

A Necessary, with the approval of the Chief of Engineers.

Captain Carter: But, suppose in the execution of your work with the man representing the company, you have difficulty in getting these modifications made, because they in-

creased his cost, the cost to him, or because they involve a little change by which he may have felt that the cost is increased to his company; suppose you became convinced from your investigations and almost daily presence on the work that it would be almost absolutely impossible not only to get no lower bids, but impossible, perhaps, in case of a new letting, to get bids as low as you had, would you not strive to have the contractors go ahead and do that work at the prices he then had?

A With the approval of the Chief of Engineers, I would if I felt that way about it. If I was convinced that that was the type of mat desired, that its cost was practically the same as that of the mat on which he had bid, I would under
548 that clause authorizing a modification, write for the authority of the Chief of Engineers to make the change and state on what I founded my beliefs as to cost &c., and get his approval.

Captain Carter: There is one other condition which has not yet come in: suppose you were making these experiments day by day and you became convinced from your efforts to do this work that it would be impracticable, impossible for you to get even the same bid from the company if you attempted to have a supplementary contract signed, would you not try to ease the matter along for the benefit of the United States and put in what you needed without putting yourself in a position to get higher bids by asking for a new contract?

A I cannot conceive of a case where the contractor would object to signing a supplementary contract, if his amounts were not decreased, and the case was practically the same.

Q The case is very simple. Here is brush being hauled say 15 miles, the more you say the longer is the haul, until it is hauled from 50 to 70 miles. If a contractor knew in the beginning that there was to be an enormous amount, he would have to provide in his profits for that haul; but, finding that day by day, having mattresses ordered, he will sometimes, rather than refuse to do work under his contract, do it at a less price having a contract, then he would make if he had to make a new contract, as he would have the advantage over everybody bidding, all the rest of the work and
549 his plant being there. In other words, that with a new letting he would be practically the only man to bid.

A That was not my understanding. I thought this referred to a supplemental contract under that clause in the specifications which allows, if there be a material change in

the price or character of the work, for a written agreement between the contractor and the officer in charge.

Q That is true.

A That is what I had in my mind.

Q It is this way: These changes come about little by little, without anybody being able to foretell what the extent of these changes would be, and investigations as to cost determined the facts to be as I have stated to the best of my judgment, and my object was to get this thing carried through and to get my successful results without an increase in price.

Colonel Gillespie: Captain Gaillard, if you were a constructing officer, constructing a work under the authority of the Chief of Engineers, calling for a specific quantity of material, and you found that after you had begun construction that this violent and progressive decay and deterioration was going on that is described by Captain Carter, would you not think that something was wrong in your plans, and that it was time to stop and find out where you were?

Captain Carter: I beg pardon, Colonel, there was no decay or deterioration in the materials. It was subsidence 550 which was unusually great, that was the trouble.

Colonel Gillespie: I want to know if you had noticed that in your work and found that the only conditions there were such as beyond peradventure, would enormously increase the quantities you were going to use—

A In that case it would, but I was told in the actual case it increased the quantities of one material but did not increase the general cost.

Captain Carter: That is the truth.

Colonel Gillespie: It is changing the conditions under which the contractor began work.

Captain Carter: Changing the relative quantities, I should say.

Colonel Gillespie: If such a thing occurred, would it not be your duty to report it to the Chief of Engineers?

A Yes sir.

Captain Gillette: Of those two photographs which would you consider, would you consider either of them as being built under the specifications you have read under Cumberland Sound, the third design?

A I would consider that that was built (pointing) according to the third design, as they seem to be fascines. As near

as I can tell I would say that that was built, probably, in accordance with that design.

Q Is that too the mattress, (pointing) on which, the kind of mattress on which your price was given, 63 cents, as-
551 suming that this represented the price.

A I can only say that in general appearance it was almost exactly like our mat, except that we always have the 6 foot fascine on top.

Q Is your mat as regular as that?

A The ones that I buildt myself were, except that they had leaves on. We trimmed no leaves off. It is not exactly the same, no sir.

Q Would you think, with the exception of the leaves, that the specifications of this third design approximately described this mattress?

A Well, I should certainly think that that mattress would come under that design, looking at the photograph. If they were properly choked, I would say that that was at least as good a mat as this called for.

Q Having specified a mattress something like that, would you consider yourself justified to authorize a contractor to go to work and put in a mat of eight courses at once, without notifying the Chief of Engineers?

A I think I have answered that question once.

Q This is a different case, the first mattress put in under contract.

A Then I would certainly get the authority of the Chief of Engineers if I considered that type to be more desirable than the other; but, if that were the first mat, the beginning of a contract, and my work is not in danger, as was
552 represented in the other case and the delay would not be as critical as in the former case, I would ask permission from the Chief of Engineers to re-advertise the work.

Adjourned to 2:10 P. M.

The Board met in pursuance with adjournment.

MR. JOHN W. RUTHERFORD was called by Captain Carter and examined as follows:

Captain Carter: Will you state your profession?

A Civil engineer and contractor.

Q How many years experience have you had in engineering and contracting, about how many?

A About thirty years; actually 28 years, exactly.

Q Are you familiar with the specifications which I sent out in 1896 for work to be done by the United States at Cumberland Sound, Florida?

A Yes sir.

Q Have you examined the locality?

A I have sir.

Q For what purpose?

A For the purpose of making a bid upon the work called for by your advertisement.

Q In reading that specification, was the character of the work to be done clear to you?

553 A Very.

Q In those specifications three designs of mattress are called for?

A Yes sir.

Q Will you tell me whether or not there is any material difference in the cost of those three designs, in your judgment?

A The three designs, as I recollect, from photographs made at the time do not vary considerably in regard to cost. My understanding of the situation was that you explained them to me in your office. I asked in regard to the specifications in several particulars. You told me that the greatest amount of mattresses would come under the third specification clause, the largest amount, and that the others would be less in quantity. I wanted to know positively what was going to be done, so that I could make my bid govern the general work to be done; but, as I recollect it just now, there was a very little difference in the cost to me, as I estimated it, between the three classes of mattresses. (Question by Capt. Carter.) Suppose the price had been put in, would you have felt that you had any guarantee, in case there was any difference in the cost, as to which design would be used? There were three designs called for at the same price, you stated they dont vary materially in cost.

A Yes sir, I so stated.

Q Suppose you had not been clear in your mind that 554 there would be no variation in cost and desired to enter into a contract, could you have been protected in that case?

A Well, I certainly should have tried to protect myself by having it understood before I signed any contract.

Q Was that possible?

A It was certainly possible or else you would have thrown me out; but I made up my mind that there was not enough difference to justify me in changing my contract in case I came to the front.

Q Did you examine the language of the specifications concerning the rock required?

A Oh yes.

Q What kind of rock did you understand was required for fourth-class rock?

A You told me Florida stone. In that case I don't mean to say that I looked into the question of the specific gravity of the rock, but in general terms you stated Florida rock.

Q Did you bid on the work finally?

A I did not, sir.

Q Will you tell me why you did not bid on the work, as far as you feel as liberty to do so?

A I had it understood with certain parties in New York who were to identify themselves with me in the work, and also to furnish the bonds, and who would do so on my calling on them. After the examination I came back here and the gentlemen who had agreed to go on the bonds withdrew 555 and, I therefore, did not put in any bid.

Q Did you examine the conditions thoroughly and prepare prices for that work?

A I did and handed the prices over to my associates and the report of my examination.

Q Do you remember what your bid was for mattress work?

A Yes sir.

Q How much was it?

A $1.05.

Q Do you remember what your bid was for fourth-class stone?

A I think it was $3.10.

Q At those prices, in which work would there have been the most profit to you?

A Decidedly the rock work. I must say in explanation of that. that the processes of reasoning that go through a man's mind in bidding on a piece of work, vary with the circumstances. In this instance there was one thing that entered very largely into my decision as to what to bid. I took it for granted that the man who had been previously there at work on similar contracts, such as were advertised, would have his

plant together, his men together, his arrangements made for the purchase of the materials of different sorts and I thought he could build the mattresses pretty cheaply, and I wanted to force him down on that and I knew that I had for getting stone, facilities that he did not have. Therefore, I made
556 my bid a little lower on the mattresses and a little higher on the stone than what I afterwards found out to be the figures he bid.

Q Are you not mistaken as to the stone?

A I cannot tell about his bid, but the aggregate of my bids was about $32,000 less than his on everything, including mattress and stone.

Q Did you examine into the character of the work done at Cumberland Sound under previous contracts?

A I went down the channel. As near as I could examine it in the time I had to do it in—I took a sailboat there with a channel pilot—and made a pretty fair examination.

Q Did you examine into the methods used by the previous contractor?

A No sir, not distinctly.

Q Were you familiar with the general methods used by him in building and sinking mattresses?

A Only as I examined into the question by interrogating men who had been in the former contractor's employ, his engineer, his workmen in the woods, &c.

Q Are you familiar with fascine construction?

A I am.

Q Do you remember the specifications for the construction of fascines written by me, these specifications for Cumberland Sound and Savannah River?

A In a general way, I recollect them, yes.

557 Q What kind of fascines do you consider contemplated or meant by those specifications? I mean what kind of brush, and how that brush is to be treated?

A The brush of the country such as you could get on previous work.

Colonel Gillespie: Where did you do previous work?

A St. Joe, Mo., and Fernandina, Fla. At St. Joe I had charge of protecting our influent pipe for the water works.

Captain Carter: Did you understand by these specifications that the fascines are to be what are called military fascines, trimmed of leaves, twiggs and etc?

A No, I did not understand them to be anything of the sort; branches of small scrubs and willows bound thoroughly;

but as to trimming off the branches, as I considered it, to make a foundation I always wanted to have the branches untrimmed. The leaves and the small twigs left on. As I understand, a military fascine is an entirely different matter, it is all trimmed and bound together and you have everything bound thoroughly and lopped off, but for construction I never found that it would do to build them that way.

Q Did you investigate the relative cost of building mattresses singly or building them on top of one another?

A I did not go into that thing particularly, no. I asked you in the Savannah office about the mattress and you told me the style of the mattress. You said there might be
558 two, three or four put on top of one another, there was not very much difference to me because if you allowed me to build those mattresses four or five on top of one another, there was an extra risk in getting them into place to begin with. If I made a loss of one of those mattresses I made a very substantial loss. If I only lost a single mattress it was immaterial how much I made on the balance of the contract.

Q Did you understand, however, that as a matter of fact if you desired to do so, you could sink as many as the depth of water would permit?

A That devolved upon the engineer. I recollect you showed me a paper, a plan of what had been done and I recollect your calling my attention to the fact that in some of the other mattresses they might have lapped over and other mattresses had been required to be put in on top of those. In new work you explained to me most thoroughly that I could take one or two or more. You did not require me to put in those double binders there or two thicknesses of grillage, but you would allow the top grillage of the one mattress to be the bottom grillage of the next one.

Q As a matter of fact, which would you rather put in, a grillage or an equivalent in fascine work?

A Well, I don't know as it would make any difference to me. I did not want to put in too many at a time on ac-
559 count of the risk in putting them in place, in getting four of five on top of one another.

Q Were you afforded every facility for investigating the work down there?

A Every facility I could possibly ask for. You were very kind to me in this respect.

Q As to the exposure—did you look into the exposure at the North jetty at Fernandina?

A Yes sir I did.

Q How near do you estimate now that you can get any barge of rock or tow-boat or other boat full of rock to that jetty at high water?

A The day I was down there examining the work, there was a slight breeze from the Northwest and it raised quite a pot of water on the bar and I don't think I would risk very much machinery there in that neighborhood even at that time.

Q As a matter of fact, then, to get the stone in on that north jetty, you could not use a floating plant?

A No sir, I decided that after looking the situation over.

Q So that it would, or would it not, very largely increase the cost of your plant when you finally came to finish up the work?

A Yes, the outer end if very dangerous work, very heavy work to do. I would put in trestle work there.

Q How long could that stand there?

A I did not expect it to stand there very long. No
560 longer than enough to complete the work, if it were done in four years. I expected in the meantime to have sufficient of the jetty built to afford me a harbor of refuge at any time for the plant.

Captain Gillette requested the meaning of "Veni vide" used in a telegram from the witness to Captain Carter concerning which he wrote the following letter to the witness: —letter from Captain Gillette to Mr. John W. Rutherford, dated Savannah, Georgia, October 7, 1897.

(Mr. Rutherford) That telegram was sent from Yulee, Florida. I had been down there on business and went into the telegraph office to telegraph Captain Carter and some other persons were in there writing telegrams and looking around and I did not want any person to look over my shoulder and read what I was writing, and so I put these words, the words I thought would do. This is my explanation of it.

There was some side talk concerning Captain Carter's not giving facilities to the bidders to enable them to make their bids, &c. and the use of Florida rock, &c.

561 Colonel Gillespie: I wish to say that I received a letter from Mr. Schermerhorn, President of the American Dredging Company, dated October 6, 1897, concerning Flor-

ida rock. I think it is of sufficient importance to read and put on file.

(Colonel Gillespie read the said letter, which is marked file No. 96).

Captain Gillette: Speaking of bidders not being given the specifications and not bidding, I have an affidavit here from a gentleman about a difficulty of getting specifications.

Major Raymond: You charge that Captain Carter did not give him the specifications?

A This man came to the office and had difficulty in getting them. I will read the affidavit:

(Captain Gillette read the affidavit of James Foley verified October 7, 1897, marked file No. 93).

Captain Carter: Do you know whom Mr. Foley is?

Captain Gillette: I have never seen him but once. I believe he is a commissary who feeds the men down at the Fort.

Captain Carter: If the Board is willing I would like to have several of the reputable citizens of Savannah state to the Board what sort of a man this man is.

562 The Board gave their consent.

Captain Carter: There is one thing I am going to ask Mr. Rutherford if I can bring him back, and that is with regard to the increase or decrease of materials, whether it would make any difference to him, as a man having had experience. May I send out and get him?

(Permission granted).

Captain Gillette: The question came up as to improper payrolls with fictitious names on them and with enlarged amounts opposite the names. Captain Carter stated that those things were done by his Chief Clerk. Here is a roll in which the name of W. Raymond appears for an amount of $12.50 which very plainly bears the mark of having once been $12.45. The man is marked as a laborer, W. Raymond, and is marked by M. A. Connolly, witness. I would like to ask Captain Carter if, when he signed that payroll, the certificate to that payroll that the roll was correct and just, he knew what he was signing?

Major Raymond: Do I understand that it has been altered to the extent of five cents?

Captain Gillette: Yes.

Colonel Gillespie: The pay roll for December, 1896, for improving Savannah Harbor.

Captain Gillette: The man is down as a laborer, he is
563 probably employed at something of that kind, and I want to ask Captain Carter if he knows anything about the man and if his system of signing pay rolls is such that he must have known that the services for which he was paid were rendered.

A Well, I suppose I must have known it at the time.

Captain Gillette: Here, bearing about the same date, is a bill from W. A. Raymold, for uniforms for the "Angler" which is not found as paid by any other voucher.

Major Raymond: What is the amount?

Captain Gillette: $12.45, the same as the payroll before erasure.

Capt. Carter: This is Raymold. I have not the faintest idea who he is. Being signed by a mark he is a negro, I suppose, because that is the way they usually sign. That is the way they always sign with me so far as I know. I would like to know how this 45 cents was put in.

Captain Carter: I would like to know if this 45 cents was put in—I could get that from Mr. Connolly. The only thing is, of course it must have been right.

Captain Gillette: Mr. Sterly states that that signature on the payroll was to cover this bill; that he drew the amount out of the bank excepting he could not quite make it come 50 cents by the rates of pay, so he had to make it 45 cents and gave his check to Captain Carter for $12.45 and that check is here with Captain Carter's indorsement on it. So probably Captain Carter knew what he got that check for.

Major Raymond: If this was paid on January 4, then it was not paid with the proceeds of this check.

Captain Gillette: No. The explanation is that Captain Carter paid this bill and this check after drawing the money out of the bank, that Mr. Sterly drew the money out of the bank and paid Captain Carter, stating that Captain Carter had paid the bill himself.

Captain Carter: I had implicit confidence in Mr. Sterly. Usually these checks coming in about the first of the month were to pay me back over and above the money I had given him to spend during the month before. I think Mr. Connolly ought to be able to tell about that because of his signature. He is the clerk of the Nicaragua Canal Commission.

MR. JOHN W. RUTHERFORD was re-called by Captain Carter and examined as follows:

Captain Carter: In speaking awhile ago of your examination of Cumberland Sound and your stating that there was less profit on the mattress work than on the stone work, would you as a contractor bidding on a work, feel that your successful competitor on a work for which you had bid, was being treated in such a way as to make it unfair to you, if the quantities on which you both bid were changed, provided they be changed in such a way as not to increase his profits?

A I could answer that very easy by stating that there was a clause in the specifications by which a contractor could
565 not receive bad treatment. The quantities were either to be increased or diminished and a corresponding price allowed or deducted.

Q No, I mean in case there was no material change, what I am striving to get at is this: suppose, for instance, you both bid for 100,000 square yards of mattress work and 100,000 cubic yards of stone work and in carrying out that work the engineer found that it was necessary to increase the one and diminish the other, such change not resulting in any gain to the contractor. Would it be unfair to any of the other bidders on the work?

A I don't see how it would. It would not affect my prices at all. If I thought it was unfair, I would call attention to the clause in the contract which allowed the application of the rule of either increasing or diminishing the work and a corresponding price either added to or deducted from the contract.

Q Yes, that is in case it changes. I asked, suppose it does not change the price to the contractor.

A Then he has nothing to say about it; then there is no harm done.

Q Is there any harm done anybody else?

A I cannot see how there could be. Certainly the only one to be hurt would be the contractor. If the engineer was going to make a change in the cost to the contractor of materials he would talk about it at once.

566 Q Do you know of any instance as an engineer where a contractor has a contract and it becomes necessary sometimes to slightly modify the work he is doing, whether he

will go on with the work even though it is not as advantageous to him in some respects, without increasing the price?

A I will give you my experience as an engineer. I have built 38 different public works in the United States. I don't want to change contracts by introducing a new element in a contract, wanting to do a similar class of work that is already being done, by asking different prices for it. I find out that a man will go on doing work that may be slightly disadvantageous to him, if he can establish a general average on his work. There are a number of cases where I did not advertise for work but let it without advertising because I considered it for the best interests of the work I was in charge of. An engineer in charge of a piece of work is supposed to be looking out for the best interests in his dual capacity, the best interests of all parties; but, if I were to re-advertise for work the man who was then on the work, with all his plant and all his facilities for doing it, would stand a better show, a great deal better show, to get the work again and might bid a higher price for it, knowing that he was in charge over every part of the work and that any other contractor coming in there would be subject to a great many inconveniences. I am merely talking now as an engineer in civil employment. I
567 would always consider the best interests of the company I was working for, whatever decision I made.

Q Is the price bid on a piece of work by a contractor conclusive that he is making money on that work?

A Not by any manner of means.

Q Suppose a man bids, say 50 cents per unit on a certain piece of work and then sometime afterwards bids a $1 on the same class of work. Is that conclusive proof that the latter bid is excessive?

A Not at all. Contractors sometimes take work below cost. I have taken pieces of work, certain classes of work, below cost because I was that better able to do the other classes.

Colonel Gillespie: If a great number of contractors bid for 50 cents, would that be regarded as establishing the fact that that was the cost of the work?

A At the time the contract was let it may be.

Q And if someone steps in and bids a dollar that would be regarded as excessive?

A On the same bid, yes. In the same locality 50 cents would be considered the price at that time. If there was

no great interval of time between the bids, it would be considered the price at that time.

Colonel Gillespie: When a $1 unit was bid, it is to be considered equally with the 50 cent unit, which was the price established at that time.

A Yes sir.

568 Captain Carter: May there not be conditions arising within a few months apart causing variation in bids?

A There are conditions that affect work in a few months when you take into account the contiguity of materials, when one year I might bid 50 cents a square yard and then another year a dollar.

Colonel Gillespie: Mr. Rutherford, was not the country full of brush?

A No sir.

Q Would one seasons work clear it all out?

A No sir, I am basing my figures of a $1 on the price of material that I could secure for the work.

Captain Carter: What I want to ask you is this: If a number of contractors testified that the work cost them from 60 cents to 80 cents a yard and a contractor bids 50 cents, then is that man necessarily who bids 50 cents making money?

A No, there are a number of circumstances that might be taken into consideration in making that bid. I may quite willingly bid that price to get some other man out of the business so that I will have a better price the next time I bid.

Q Is that recognized as business generally?

A Well, it is done. I don't know whether it is recognized generally as business.

Q Is it done in the railway business?

569 A Yes, they are cutting there all the time.

Colonel Gillespie: If that thing of bidding 50 cents continued for a series of years, would it not establish the fact that 50 cents was ordinarily the lowest rate you could get?

A I should think that would be a reasonable supposition.

Q But if that was immediately followed by $1.10, would you think that a little excessive?

A I should consider it so.

Captain Carter: Which would you rather bid, at 60 cents or 70 cents receiving your pay in gold, or one dollar and ten cents receiving your pay in silver?

A Well, I knew I was going to get United States money

for it and anything they would give me would be good enough, if it was down in Mexico I would answer that question.

Captain Carter: Suppose work costs 65 cents a square yard for mattress work, that being the figure as determined by the United States actually doing the work. What would you consider a fair margin to a contractor for work which would cost the United States actually 65 cents a yard?

A Do you include your plant, interest on plant and all of that in your estimate for the United States?

Q Well, that I cannot say, as I did not make the estimate.

A The contractor has got to do that, he takes his superintendence into account. Then there are delays and rainy days and so on, and I don't suppose the United States does that.

I should say 20 per cent added and then ten per cent for
570 contingencies would be a fair margin. The 20 per cent ought to be added anyway.

Q But, suppose none of those things were included?

A Then the figure should be plus the amount I have mentioned.

CAPTAIN WILLIAM M. BLACK was re-called and examined as follows:

Captain Black: We have a considerable amount of data as to the exact cost of brush fascine mattresses based on actual experience with mattresses of exactly those designs at St. Augustine and at the mouth of the St. John's River. In comparing the various specifications, "the difference between the three designs of mattresses proposed for the Savannah District and the designs used in the Florida District are as follows:"

Captain Black here read his detailed estimate as to cost of mattresses in evidence, the same being marked file No. 97).

Board File No. 97.

CAPT. WM. M. BLACK'S ESTIMATE OF COST OF MATTRESSES.

Referred to Board Record p. 570.

Difference between the three designs of mats proposed for the Savannah district and the designs used in the Florida district.

1st: Savannah District, design log mat, covered with brush,

Is like that used at St. John's Bar, Florida, except that the latter had five inches of brush, while the former had six inches. The St. John's mat was required to have at least three binders to hold each log in place, in case regular binders 8 feet apart did not fulfill the condition.

2: Savannah District—design fascine mat.

This mat is essentially the same as that used at St. John's Bar, Fla., and St. Augustine Harbor, Fla., except that in the Savannah District design it is specified that "the brush will be as straight and well trimmed as can be obtained," while in the Florida District fascines were not made of trimmed brush. In the 5th Augustine mats both bottom and top grillage were composed of double rows of binders.

3: Savannah District design; fascine mat.

This differs from the Florida design in the ommission of the top layer of fascines, six feet apart, and in requiring the brush to be trimmed as in the 2nd design of the Savannah District.

Based on contract of 1886 at St. John's Bar, Florida, design one, Savannah District, would cost 45 cents per square yard.

Based on prices of labor and materials of mats made by hired labor at St. Augustine, Florida, 1889-1890, and cost of spikes and superintendence at St. John's Bar, Fla., designs 2 and 3 of the Savannah District, would cost practically the same amount, 60 cents per square yard in the jetty, exclusive of cost of stone ballast.

Cost of eight layer facine mat, assuming each layer to be composed of well choked 9 fascines and to have a top and bottom and seven intermediate layers of double grillage poles.

Assumed size of each layer 75′x120′.

Assumed price of labor 15 cents per hour. Prices based upon mats built at St. Augustine Harbor, Fla.

64,800 lin. Ft. fascines—at—$3.16	$2048
9 sets of grillage poles—at—$30.00	270
27 keys of 60d. nails—at—$2.50	70
2500 lbs. of manilla rope, at 13⅔	341
Labor of assembling mattress	
135 as many fascines as 1/2 as many poles per layer —— as St. Aug. mattress, estimated at $100.00 per	
161 layer	800
Cost of launching, towing and sinking, estimated at	125
Superintendence	75
	$3729

8,000 sq. yds. cost per square yard.....$0.468

The cost of each fascine will vary very nearly in proportion to the amount of brush it contains, and if the amount of brush in each fascine is diminished, the cost of the mattress will be reduced in nearly the same ratio.

Captain Black: Now, I have here a printed statement which was taken from my notes and which gives the cost and method of the construction of the mattress at St. John's and also
571 the amount of brush it contains for one mattress.

Captain Carter: May I ask you how it is, if you build a mattress with the grillage underneath, with a fascine layer and a grillage on top, and build another mattress replacing your grillage by fascine work, an equivalent amount of fascine work, how you make the difference in the cost?

A You cannot put in more fascines in a layer to save your head.

Q But men very often have two fascines instead of one depending upon the size of the fascines?

A I am just taking your specifications and putting the mattresses on top of each other.

Colonel Gillespie: Captain Black, do I understand you to say in your estimate that you now give of 47 cents a square yard, that the fascines are the regularly built fascines which are known since this investigation came up as military fascines, or were they loosely bound brush, as defined by some of the Inspectors?

A They were fascines, but not military fascines. Military fascines are trimmed close so that they resemble a log of wood. A fascine for jetty work is choked as tightly as a military

fascine, but the brush is not trimmed, in order that it may bulge out between the binders.

Captain Carter: Take a fascine built for civil purposes in that way, made of green brush, choked tightly and expose it for several days or weeks, lying on the earth, to the sun of summer. What effect would that have upon the binders?

572 A To loosen then, (witness going on). Now, there was some question as to the weight of stone used on the St. John's River, and I have here the weights of stone, all under the same specifications that we used. In 1888 the Florida rock under these specifications weighed 2200 pounds per cubic yard.

Captain Black read from a paper which was introduced in evidence and marked file No. ....., giving weights of stone used in St. John's work). 2200 lbs. per cu yd.

Major Adams: Have you made any estimate of the cost of the mattress actually used by Captain Carter?

A No sir, I could not get sufficient data to get at it. I tried to but could not make it.

Major Adams: You have read the testimony here, have you?

A I only read over the portion there that you showed me relating to it.

Q What we are reaching out for is an estimate of the cost of the mattress actually used in the work?

A What I tried to do from the data was to obtain the actual weight of a mattress properly made of the size of the one that was made and then comparing it with the weight of the one that was made, the difference would necessarily be in the amount of brush contained; and I found that I could

573 not get at it properly and it was impossible to find out how much should be attributed to the weight of the grillages and how much to the fascines.

Captain Carter: It seems to me that this is an unfair statement.

A I retract it, I call it mattress number 2 and mattress number 3. I desired to make no reflections at all in the matter; simply designs numbers 2 and 3 of the designs showed us.

(There was some side talk here, not reported, which grew into the following).

Captain Carter: What I was going to state was this; that the statements made by these assistants to Captain Gillette differed from the statements made to me, extending over a

number of years. Not all, some of his assistants, one especially, is telling the same story now that he told then. The other men who have been discharged or who have gone away from the District, without exception, so far as I am able to find them, make the same statements now that they made then. The men who remained in his employ are the only ones, so far as I can ascertain, who are making to him different statements from the statements they continually made to me. The fact that these men made these statements to me, I shall prove conclusively, because I have a number of people and the
574 affidavits of a number of others, whom I can get to come here, so that I say that a mattress built upon the statement of the men here, my assistants, but who have since, coming under the influence of Captain Gillette, made different statements from what they have made before, it seems to me that it is rather hard.

Major Raymond: So far as I know, the Board has not objected to your presenting any statement or any evidence that you desired to present?

Captain Carter: No sir.

Q Now, two members of the Board ask that you make this statement.

Captain Carter: I have no objection to it at all. It seemed to me only fair that if they are going to make an estimate of the cost upon what these men now say, that they should also make an estimate of the cost upon what those same men stated to me and which I believe to be the truth in the case.

Colonel Gillespie: In that regard you must be fair to the men themselves. The reports they submitted were on blank forms given by you and we have the testimony of those men that what they regarded as being in accordance with the specifications, was in accordance with the interpretation of those specifications as given by you?

A Yes, but I also have further than that.

Q You must be careful not to do them an injustice?

575 A You can see that there is nothing that can be said in reference to this matter that I would object to.

Q We have been waiting 17 days for you to bring it out?

A Major, it has not been possible for me to get this information before the Board.

Major Adams: You cannot afford to place yourself in the position of objecting to the Board's getting information.

A I don't, Major, I only suggested that it seemed to me fair that two of those estimates be made.

Major Raymond: I suggest that we wait until we find out whether this design, this estimate, rather, that you want has anything to do with the case. I have no objection to your estimating on anything, only it seems to me, that we have been wasting a good deal of time on these estimates.

Q How do you know, Captain Gillette, that the Inspectors, after Captain Carter left, required the same thing that they did before?

Captain Gillette: The Assistant Engineer, whom I found in charge, told me that that mattress was as good as any.

Q Who is the Assistant Engineer?

A Marion Twiggs is the man. He began with the work and went through with it. That is, the entire contract he has been in charge of.

Q There is no reason in the world to believe that he should make any statement that is not true in regard to the construction of the mattresses?

A None that I know of.

576 Q When had you seen him?

A I saw him when I inspected the mattress.

Major Raymond: I thought you said once, Captain, he was a brother of a disappointed contractor?

A Yes, he is.

Colonel Gillespie: I am perfectly willing to assent to the request of Major Adams that the cost of that particular mattress be estimated, if you can estimate it.

MR. M. A. CONNOLLY was called to the stand and examined as follows:

Colonel Gillespie: There has been presented to the Board a payroll of December, 1896, in which your name appears as a witness to one of the signatures of a colored man?

A Yes sir, that is my signature.

Q And apparently, you wrote the name of the man also in there?

A Yes sir.

Q You knew the man?

A I believe I did, but I take it for granted that every man brought to me whose cross mark I witnessed, was, in every case, a colored man. I don't remember witnessing a cross mark on a write man's signature during the time I was in

that office there. I must have witnessed many signatures
577 and in every instance there was a man produced responding to the name, but I don't pretend to know every darkey in Savannah or around that District. But I took the word of any man in the office.

Q Did you know of anyone who went by the name of Raymond?

A In a way, I did, yes sir, but if there was one produced before me and said his name is Raymond I took it for granted that it was Raymond. Does the Board want me any longer?

Colonel Gillespie: Yes.

Captain Carter: Do you know anything further than that you witnessed that signature?

A I cannot remember all the details. This is my signature.

Colonel Gillespie: Then you don't know anything about the roll as a roll?

A This is Mr. Sterly's writing, as I remember it, undoubtedly. Undoubtedly when I was asked to witness the signature of any employee, if I did not know the man, the man was brought to me by Mr. Sterly or some clerk in the office, saying, this is W. Raymond, and if I did not know him I assured myself beforehand in this way. Therefore, in this case this man was brought in to me by Mr. Sterly or some other clerk in the office and it was undoubtedly a colored man, as I remember no instance in which a white man who could not write was brought before me in that District.

Captain Gillette: Then if Mr. Sterly would bring you a colored man you would witness his signature?

A I would undoubtedly.

578 Q Why did you not say, Mr. Sterly, if you know him why don't you witness the signature yourself?

A May be I did in some instances talk to Mr. Sterly in that way.

Q Do you remember the roll at all?

A Oh no, I cannot.

Q In what capacity did you act in that office?

A As clerk, attending to the correspondence. I had very little to do with the vouchers because I had enough to do with the other work and Mr. Sterly was very zealous in his work on vouchers; he did not like to have them in different handwriting.

Q Did you have to witness many of those signatures?

A I dont think I witnessed very many, not so very many.

Q It was only six months ago, how has it happened that you cant remember if you only witnessed a very few?

A I cannot remember all the signatures of Savannah men or in Savannah City that I witnessed. I am sure that I always made it a practice, if I did not know the man, that he was properly vouched for. I dont recollect W. Raymond just now. I suppose Mr. Sterly would recollect him.

Major Adams: Mr. Connolly, did you ever draw up any bids for contract work of any contractors connected with the Savannah office?

A Well, when I was United States Commissioner in Savannah, for five years until June 30 of this year and for five years preceding that, during all the time I was down
579 there, I acted as Commissioner, United States Circuit Court Commissioner, I did not make out any papers for any contractors, but I had them swear to them. They came before me and produced men who swore that they were sureties on guarantees. I made lots of those for lots of contractors in that District. I had an office in the United States Custom House office by courtesy of the Marshall. I was appointed I think in 1891, early in the spring of 1891. I was United States Special Commissioner in Admiralty under rule 47 of the equity practice; and some one came to me one day and said, Mr. Connolly here are some sureties on this work, producing some specifications and wanted me to swear them. I said I dont know whether I could as United States Special Commissioner in Admiralty swear these men in. It says underneath who could swear in the sureties. I wanted a Judge's opinion on it first, but Judge Emory Speer, who is a District Judge, was at that time in Macon and I wrote the Judge and sent him a copy of the specifications and asked him if he thought that I, knownig that I occupied a position in a Government office, could swear in these sureties. And Judge Emory Speer wrote me that I could not swear in such sureties, and he said that I did not have authority to do so, but he said in the same letter, substantially this; you can do this work as a United States Circuit Court Commissioner and I herewith enclose your commission as a Circuit Court Commissioner and now you will enjoy the dignity of be-
580 ing called Judge. I remember that extract from it, it shows that he knew that I was in the office. Then after that, when anybody came to me in the office and asked me to do sureties, I did as I was legally empowered to do.

Major Adams: Were you at that time employed by Captain Carter?

A Oh yes; but, the Judge liked me and gave me this appointment because he said he knew I deserved it and thought I could fill it. Captain Carter objected at one time to this and I told him that Judge Speer, who was a good judge of law and a good authority in such a case, wrote me that I could do it, so I continued to do it with my other Commission work.

Q When were you first employed by Captain Carter?

A I went to work there September 1st, 1888.

Q What were you doing at that time?

A I was a clerk in the Post Office at Boston with Mr. Edward T. Barker, Superintendent of the mail delivery.

Q Did you make application to Captain Carter for employment.

A The way I entered his employ was this: some shorthand man in New York, a publisher, sent me some shorthand books and we corresponded and once he said there was a good position which he thought, if I wanted it, I could get it, and he gave me the name of Captain O. M. Carter of Savannah, Georgia, and I remember within a month after that, of seeing my original application down there with about 13 enclosures of typewriting work. I did not know of Captain Carter until August 1888 or July 1888. Then I looked him up in the
581 Army Register. As soon as I found out who the officer was who wanted a clerk, I made application.

Q Did Captain Carter ever send you away from Savannah to do any kind of work for the United States?

A Send me away from Savannah to do any kind of work for the United States?

A Yes.

A I dont remember just now of doing any kind of work away from Savannah for the United States.

Q Dont you remember coming up here to New York anywhere? Did you not go around doing work for him?

A Oh yes, in his District. I went to Fernandina once.

Q Did he ever send you any place in the state of New York?

A I dont remember of any.

Q Did he ever send you to Patchogue, Long Island?

A No sir, I have never been there.

Q Is J. B. Connolly a relative of yours?

A He is my brother, a younger brother.

Q Has he ever been employed by Captain Carter?

A He is.

Q In what capacity?

A As clerk, making out vouchers and so on.

Q Did he ever send him to the state of New York to do any work for the Government?

A Not to my knowledge, no sir. I dont know anything about his sending him to New York or any other place.

582 Major Adams: Do you know which Connolly was sent to New York?

A No.

Q I understood you to say that you had never been sent north from the Savannah office to do any work for the United States?

A Oh, I have been north on my vacation.

Q Did Captain Carter ever pay your expenses?

A I paid all my own expenses. I borrowed money from Captain Carter on two instances when my family was up here and I came up here.

Q Did he refund you your expenses for any of these journeys?

A I never made any journeys for Captain Carter. On two instances, when I went north, I borrowed some money from Captain Carter so I would not be short on my trip and when I took my family back, which I repaid him later on.

Q Did the Captain ever refund you the expense of these journeys?

A No sir, I made no journeys for Captain Carter. They were all my own journeys. I have been up north every summer, or once a year anyway.

Q Captain Carter, did you make any statements to the Board about the journeys made by Mr. Connolly?

Captain Carter: No sir, I dont think I ever did.

Q I understand you to say that you went to Patchogue, Long Island?

Mr. Connolly: Hardly; it was Sterly, you have got it mixed up.

583 Captain Gillette: Do you remember where your brother was when you went to Boston, the last time you went there on a vacation?

A I dont remember the last time he went to Boston on a vacation.

Q The last time you went to Boston on a vacation, do you remember where your brother was, J. B. Connolly?

A I believe I met my brother Jim every time I went to Boston.

Q Met him in Boston?
A Oh yes, met him here in New York too.
Major Adams: Where is your brother now?
A In Boston; he was yesterday.
Q What is he doing?
A He has an interest in a magazine, an amateur sporting or athletic magazine called "Land and Water" and he writes for various sporting publications.
Q When was he last employed by the United States?
A I cannot remember just now. He went to Harvard I know and left there. He was there about one year and left there just before those Athenian, those Olympian games, took place at Athens. He went on to Athens with his college for his club and he has not returned to college since, and therefore, I suppose he left Savannah in the fall of 1895. He has been in newspaper and magazine work since.
Major Adams: When were you last in Savannah?
584 A Sometime in September; the day before Captain Carter got there; not this last trip, but the second last trip; about the middle of September I started down there, I dont know the date.
Q What did you go there for?
A My family was coming up north and Captain Carter's lease on his house expired about the same time mine did, September 30. My family came north to live here and all the furniture was down there packed for shipment. Captain Carter stated to me that his furniture was down there and very likely, on account of some troubles that had arisen, it would not be taken care of, and Captain Carter wrote me a letter in Washington late in July or August or September; when Admiral Walker appointed me under the Commission he stated that I would undoubtedly have an opportunity to return to Savannah and bring my family up, and Captain Carter told me to see that his house and furniture was not disturbed and to have it watched.
Q Did you go to Savannah on your own account or on Captain Carter's account?
A I went particularly on my own account and I went on his account and I was glad to combine the two duties and told him so. I was glad to have an opportunity to do anything I could for him.
Q What instructions did you get from Captain Carter?
A The Captain said to me substantially this: probably,

now, my house is not occupied and it may be entered
585 by burgulars down there and my furniture may be scattered and I wish you would be kind enough to attend to the shipment of my goods; that is, assure yourself that they are safe. He said, if the house is deserted, please see that somebody is taking care of the house and its contents, and any other of his effects that are abandoned.

Q Did you have anything to do with the books and papers stored in the old office of Captain Carter?

A Do you mean that I had anything to do with the preparing of them? I had nothing to do with them in that way, only the day that the Board left. After the Board left the city, I shipped Captain Carter's boxes of books via the steamship company, to New York, and mailed Captain Carter the bills of lading.

Q Had you anything to do with these books and papers previous to that?

A No sir, never toucher them at all. The only book I ever saw was a letter book in which they copied an occasional letter.

Captain Carter speaking: I will state the details of uniforming my men. I don't remember, but my impression is that when I first uniformed them I increased their pay over
a certain length of time, so that the United States
586 really paid for the uniforms by increasing their pay.

Later, when the uniforms were simple working suits, as I remember, no increase in their pay was given, but the men bought them themselves. That is, in those cases I very often paid the bills or let my chief clerk do it, and let the men pay me from time to time as they could save money out of their salaries. This I dont remember, but I think I could find out from Raymold how it was paid.

(The Board adjourned until 10:30 a. m. October 13, 1897.)

587 October 13, 1897.

The Board met pursuant to adjournment.

Present, the same as before.

Captain Carter: When I was in Savannah just before I left, I asked Captain Gillette if there was anything further which he would bring before the Board in order that I might look into such matters and reply to them, and he told me there was nothing further. Yesterday he brought out this affi-

davit of Mr. Foley and the statement of my former Chief Clerk; and I would like to ask the Board if there is anything further to come up, if I cant have it all at once, and I think it is only fair, Colonel, that I should have everything together first.

Colonel Gillespie: That was not a new matter, Captain Carter.

Captain Carter: What I would like to know is this: whether or not it would be considered perfectly agreeable for me to have all these things at once.

Captain Gillette: I will say, Colonel, that this man Foley, I have never seen in my life until Captain Carter left Savannah.

Captain Carter: You see the unfair position, Colonel, it puts me in. I would like to know everything that is to come up and then I can go and get evidence.

Captain Gillette: I would like to say that if that is the desire of the Board there is one entirely new matter
588 which I knew nothing about when Captain Carter left Savannah. It is this: it appears, about four months ago a man by the name of Brown brought a suit against the Atlantic Contracting Company for payment for rock that had been rejected as being smaller than the limit of the specifications. The case was brought to trial March 11. As nearly as I could find out from the evidence I could get, Captain Carter in that case testified that rejections were made and the rejected rock was not paid for, but that the contractor, was allowed to dump it either in or along side of the jetties, but it was not paid for. That was the testimony as near as I can get it.

Colonel Gillespie: You have not explained what this court was for?

Captain Gillette: It was a civil court. A widow of a man by the name of Brown brought the suit against the Contracting Company. The records of the office show, and Mr. Cooper informs me, that absolutely no rejections were made during the period covered. I sent to the Clerk of the Court, to all of the jurymen and to the bookkeeper of the Atlantic Contracting Company. The Clerk of the Court makes affidavit as I have indicated. Ten of the jurymen, nine of the jurymen did not remember much of anything about it. The two of them make affidavit to a portion of that of the clerk, corroborative as far as they went. The twelfth man, after refreshing his memory, declined to answer. The Secretary

of the Atlantic Contracting Company at the time makes affidavit to the same thing as the clerk of the Court. It
589 would, therefore, appear on the surface as if Captain Carter had made a wrong statement under oath to favor the Atlantic Contracting Company. This I knew nothing about until the last few days. I have these documents that I speak of here. I would like to submit them. There is the testimony of Robert L. Colding, J. B. Law, John James Conlin, James L. Gallagher, a copy of the bill of rock delivered by James B. Brown, from the files of the city record, a statement by A. S. Cooper.

Major Adams: May I ask, Captain, if there is a report of that trial?

Captain Gillette: There is a stenographic report of it. I have been unable to get it, it is in possession of the attorneys of the Atlantic Contracting Company.

Colonel Gillespie: Where are they?

A They are in Savannah. I believe they will give the Board that testimony if Captain Carter will ask for it. They wont give it to me.

Colonel Gillespie: Are you willing, Captain Carter?

Captain Carter: Certainly.

Colonel Gillespie: Then I can telegraph for that report with your consent. Will you give me the names?

Captain Gillette: Lester and Ravenow.

Major Adams: Would it not be a better plan to have Captain Carter telegraph for it?

Captain Carter: I would rather not for this reason: I would rather not ask the attorneys for a copy that belongs to them.

590 Colonel Gillespie: Is it the will of the Board that this matter be taken up?

Major Adams: Yes.

Colonel Gillespie: That is all.

Captain Gillespie: The evidence that I have here, while there may be some mistake or misunderstanding about it, is the best I could get.

Colonel Gillespie: (Writing a telegram) What is the name of the case?

Captain Carter: The stenographic report of Brown vs. the Atlantic Contracting Company.

(There was some side talk here in which it was decided that only a copy of Captain Carter's testimony in this case was wanted.

Captain Gillette: I also have a case which I have been looking up at intervals for some time and have only finished it recently. In fact, the copies of the documents only came this morning. It is this: the Savannah City quarantine station occupies a point of land down the River. The Harbor lines were established there by the Secretary of War at Captain Carter's suggestion; after the works were built, a fixed harbor line was recommended, but a temporary harbor line, for reasons given, was recommended further back—sort of a tentative harbor. Under that line, after the fixing of
591 that line, and upon recommendation of Captain Carter, the City of Savannah was directed by the Secretary of War to remove all structures, ballast, etc. in front of the temporary harbor line.

Colonel Gillespie: Is there any map of the place?

Captain Gillette: (Showing a map). Yes, this shows everything but the harbor line.

Captain Carter: The harbor line as adopted is shown on another map.

(The Board examined the map).

Captain Carter: (continuing) There are two lines on the other map. One lies like that (indicating), and the other one further back.

Captain Gillette: (Continuing). The city of Savannah were directed to remove all structures, ballast, buildings, etc. from in front of the temporary harbor line. Captain Carter recommended to the Secretary of War the location of a harbor line and used these words:

(Paper introduced in evidence and marked filed No. 83)

Captain Gillette: (Continuing). The City of Savannah were directed by the Secretary of War upon Captain Carter's recommendation, to remove all structures, ballast and so on, in front of this provisional harbor line, and broken
592 line that was then the harbor line and had been adopted temporarily. This order, the Mayor of Savannah objected to, but he got peremptory orders from the Secretary of War to carry it out literally. About that time the Atlantic Contracting Company came forward and made an offer for the ballast deposited there at a very low price. The city, being unable to remove that ballast to any other place, and being required to get it out of the way at once, let them have it. Then the subject was dropped. The buildings have never been moved. The orders of the Secretary of War have not been carried out. Captain Carter has since authorized

the City Engineer to repair the trestles, and there has been no modification of the peremptory order of the Secretary of War that I have been able to find in the office.

Colonel Gillespie: What was the date of the establishment of those lines?

Captain Gillette: Somewhere in 1893, I think.

Colonel Gillespie: Four years ago?

A Yes sir. (Continuing) The station was built in 1890. The removal of the rock was more recent; I have forgotten exactly. The dates are all here. It is rumored and said that the reason of that order was to enable the Atlantic Contracting Company to purchase rock at a cheap, low price and force the city to sell it, and the papers that I have here are simply a record of the official action taken. There is nothing
direct indicating that that was the reason for it, but, as
593 far as I have seen, the indications point strongly that
way.

Captain Carter: May I ask one question? he says "rumored reason." May I ask from whom these rumors come?

Captain Gillette: To tell exactly who has said it, I dont know that I can. I have heard it from, I should think, half a dozen different people.

Captain Carter: Can't you mention one?

Captain Gillette: Oh yes, I can mention several, but I may be mistaken as to some particular individual. Marion Twiggs mentioned it and said it was common talk in Savannah at the time. Mr. Cooper mentioned it quite positively. A member of the Council at the time, whose name I have forgotten, mentioned it.

Captain Carter: Can you find out his name?

Captain Gillette: I think so.

Colonel Gillespie: Before you go any further, is it the wish of the Board that this matter shall be considered?

Captain Carter: May I say a word, Colonel? I am perfectly willing to have anything considered in relation to this matter.

Major Adams: I think that Captain Carter should be permitted to make answer, or suggestion.

Colonel Gillespie: Is there any objection? (Continuing): There is no objection.

Captain Carter: May I ask Captain Gillette, if there
594 is anybody else, besides the member of the Council, Mr.
Cooper and Mr. Twiggs, that you remember now out of the half dozen? It will help me to get hold of this thing.

Captain Gillette: I am not quite positive but that a gentleman from Savannah, with whom I talked three or four days ago, mentioned this quarantine station matter, or the price obtained by the Atlantic Contracting Company for the purchase of the old stuff some years before, and as I am not positive that he discussed this Company, I will not give his name. I will take the responsibility for the assertion and assert to the Board that the indications strongly point, to me, from this official record, that Captain Carter never intended to cut off that point; that he got this action taken for the purpose of enabling the Atlantic Contracting Company to buy that rock. It looks so to me from the official records.

Captain Carter: It seems to me this: that when these things come as common talk, it seems to me that I ought to have the names of as many of these people as possible, because I know the character of the people down there, and the fact that Captain Gillette states it, it seems to me that Captain Gillete has only been there a little while and I have been there 13 years and I would be as well able to determine the value of these statements as Captain Gillette, and it seems to me that I should have an opportunity to do so.

Captain Gillette: There are some things I have here 595 that bear on previous cases. They are more of preparation for rebuttal evidence to Captain Carter's explanations. For instance a charge has been made or a statement has been made, that Captain Carter apparently made a false official statement to the Chief of Engineers concerning an increase in the quantity of brush to be used in the Tybee breakwater. Now, I am prepared with evidence in rebuttal of any explanation that Captain Carter may make.

Colonel Gillespie: You may withhold that. Is there any new matter?

Captain Gillette: Yes, here is another pay roll matter. The fourth name, R. A. Rowlinsky appears. I dont think we have had that before. I would like to ask Captain Carter if he knows a man by the name of R. A. Rowlinsky?

A (Captain Carter): I dont know R. A. Rowlinsky. I know a man by the name of Rowlinsky.

Q Who is he?

A He is a chemist.

Q The man you sent the rock to?

A I dont know.

Q Where is his place of business?

A In October, 1897, at the Corner of Broughten and Brayton streets.

Q Did you ever have a man by the name of Rowlinsky employed as a deck hand?

A I dont know the names of the deck hands I have.

596 Q The man R. A. Rowlinsky appears on your payroll as a deck hand for $8.25, I have obtained a copy of a bill of medicine for the snagboat Toccoa for the same amount, and presumably, for the same thing. Mr. Sterly tells me that that signature on the payroll was of a Mr. Rowlinsky to pay for that bill of drugs and that Captain Carter knew it. The bill of drugs was used for Government work.

Colonel Gillespie (looking at the bill): Who put the word "medicines" in there?

Captain Gillette: I think I put that there.

Q Who put the red mark?

A I think I put that there, too.

Q The $4.17 was in payment of telegrams. Official or private?

A I believe telegrams on official business, when Captain Carter was absent presumably without authority; I dont know positively; that is my impression.

Q Have you endeavored to get the bill?

A I did not. I did not think of it (continuing;—) that is all that I believe I have that is new. Here is something that bears on that subject. It is an estimate submitted by Mr. Cooper of his own volition of the cost to the Atlantic Contracting Company for running their works when they were going heavily, estimates of what they paid their men and of the cost of their plant. He has one item of which, of course, he knows nothing, and it had better not be in, but as it is in I will leave it in. This is an item for lobbying

597 a River and Harbor Bill through Congress.

Captain Carter: Could I have a copy of that?

Captain Gillette: Yes sir, I have one right here for you. Everything is in duplicate.

Colonel Gillespie: That closes all your papers, Captain Gillette?

Captain Gillette: In new matter.

Major Adams: Captain Carter, do you propose to call Captain Greene for the defense?

Captain Carter: Well, what I intended to do was this: I did not think that it would be necessary to do so—

Q You are not able to answer that question?

A No, I have not gotten to that point yet. I wanted to find out what is necessary to answer.

Q Do you propose to call Mr. Westcott for the defense?

A I propose to call Mr. Westcott, yes.

Captain Gillette: Here is another new matter I find that may have some bearing on the case; copies of letter from Captain Carter, dated July 12, 1897, asking the Atlantic Contracting Company if they would not take rock off from spur
598 dams already constructed, and their answer saying they would be willing to do so, their reply of July 17.

(These letters were read in evidence and marked, respectively, file numbers 81, 82.

Colonel Gillespie: What is the point involved.

Captain Gillette: The point is, that it appeared to me to be an attempt to give away Government stone to these contractors. When I went there they were ready to remove this stone and I stopped it.

Colonel Gillespie: No stone was removed before your arrival?

A No sir, I think no stone was removed at all. I countermanded the permission, if one had been given.

Colonel Gillespie: Your idea was that the stone would be delivered at contract rates?

A Yes.

Captain Gillette (continuing): Here is also a letter to me in compliance with my verbal request, from Mr. Sterly, explaining how his expense for the trip to Patchogue were paid, and what he did with the money obtained from Mr. Hirt for the expenses of the boat, $132.10.

(Letter from Mr. Sterly, dated October 8, 1897, was read in evidence and marked file number 73).

599 Captain Gillette: It was stated in Captain Carter's testimony that that money was used for Mr. Sterly's expenses when Captain Carter went north for the summer, his expenses to Patchogue, and that Captain Carter had told him to refund it, that he could not use it properly that way.

Captain Carter: I think that is a mistake. I found out afterwards that the money was not received until about six months afterwards. It was something Mr. Sterly told me and I will correct it if it is not so.

Captain Gillette: Who paid, and how, for the subscription for the Daily Sun which comes to the office.

Captain Carter: I pay for that.

Q Out of your own pocket?

A Yes.

Q Why did you have it addrsesed to the engineer office rather than to Captain O. M. Carter personally?

A Because I wanted it at the office. In fact, I don't know how it was addressed.

Colonel Gillespie: There are a great many items of expenditure here. Were they paid for on the pay roll?

A None of these were paid for at all, that I know of. I don't know anything about them. This is an entirely new matter to me and I will have to look into it.

Major Raymond: So far as you know, you don't know that any of them were paid for?

A No sir, this is a new thing and I don't know any-
600 thing about it, or that sort of thing. Can I ask Captain Gillette two questions in connection with these things? I want to ask you, Captain, in connection with these rumors that you stated you had heard about various matters, did you make any statements derogatory to me within a few days after your arrival in Savannah?

Captain Gillette: No sir, I did not in the least.

Captain Carter: Have you furnished to the public in Savannah any information concerning the present investigation?

Captain Gillette: I stated to a newspaper reported that I was responsible for the initiative of whatever might be going on.

Captain Carter: Did you furnish him with any other information?

Captain Gillette: That is all, I don't know of anything further having been published.

Colonel Gillespie: Are you through with everything?

Captain Gillette: Yes sir.

Captain Carter: I am afraid, Colonel, these things may delay me a little bit because they are new.

LIEUTENANT HARRY BURGESS, was called to the stand and examined as follows:

Colonel Gillespie: During what years were you an as-
601 sistant to Captain Carter?

A From the 30th of September, 1895, to the 27th of February, 1896.

Q What was the nature of your duty when you were there as assistant?

A Principally, work in the office and to some extent, surveys; also, on work on taking up wrecks in the channel.

Q Did you have anything to do with mattress construction.

A No sir.

Q Did you ever see any of the work?

A Any of the mattress work? No sir, it was completed before I arrived.

Colonel Gillespie: That is all.

Cross-Examination.

Captain Carter: Will you tell me if you are familiar with the general instructions given by me to my assistants in the office?

A I don't know that I heard any definite instructions with reference to the papers, but I heard some of the clerks mention at various times that Captain Carter was very particular about his papers.

Major Adams: You heard the clerks say that?

A Yes sir.

Q What clerk?

A Well, Mr. Sterly for one, and I think young Con-
602 nolly, Tom Connolly, I think for another.

Colonel Gillespie: When you say "particular" about his accounts, what do you mean?

A Well, that he was very particular in carrying out the regulations with reference to having the pay rolls made up before they were signed and all matters of this kind.

Q Did they speak to you positively on that subject?

A I am sure they did, Mr. Sterly did, because he was, to a certain extent, showing me the papers of the office under Captain Carter's direction.

Captain Carter: Were you not given full access to all the papers in the office?

A I was.

Q Will you tell Mr. Burgess what you thought I wanted you to do in the office, my aim in having you in the office?

A It was to get a complete knowledge of all papers that are connected with a District Office of Engineers, to examine all the methods used in the office, this office, and I was also given instructions to make out a set of the various sets of papers connected with contracts, pay accounts and others, from my personal note book. That is all, I think.

Q Will you state to what extent you investigated and went through, during the time you were there, the papers in the office?

A I went through one set of every paper, so far as I know, that was used in the office. I did not look at and examine every individual paper, but one of each kind, and I copied
603 a large number, also.

Q Will you tell what your impression was as to the methods of carrying out the papers in my office, of carrying out the regulations, so far as the papers were concerned? What your impressions were?

A My impression was that the regulations were strictly carried out with reference to all the papers that I ever saw.

Colonel Gillespie: Have you ever read the regulations?

A Yes sir, I have.

Q The Army regulations?

A Yes sir, the Army regulations and also the regulations from the Chief's office.

Major Adams: The Corps of Engineers?

A Yes sir.

Captain Carter: Will you tell me what you impression was from your conversation with my Chief Clerk, Mr. Sterly, and from your investigations in the office during the entire period you were there, how the regulations were obeyed in that office? I think he has answered that question. What was your impression as to the action that would have been taken by me had I suspected any departure from these regulations on the part of my assistants, my clerks?

A Well, my impression was that it would most certainly be corrected and what the punishment for the clerk would be I have no idea.

Colonel Gillespie: Did you get that impression from
604 what Captain Carter said himself?

A Rather, from what the clerks said. I don't think I ever had a conversation with Captain Carter about his papers.

Q He told you, then, to go into the office and look at the papers.

A Yes sir, and he gave Mr. Sterly instructions with this in view.

Q Were you told at the time you went there that you were given liberty to examine all those papers? You went there to examine the records and ascertain what papers were prepared in the office?

A Yes sir, and the methods of preparing them.

Q The question of their accordance or nonaccordance with the regulations did not come up?

A No sir. It was never mentioned except in a general way.

Major Adams: While you were on duty in that office did you ever hear any intimation from any assistant engineer, or clerk, or other person, that there ever had been any irregularity in that office, either with or without Captain Carter's knowledge?

A No sir, I did not.

Captain Carter: Is there anything else that you feel that you could state concerning the impressions that you received from your investigation of my papers, during the time you were there, concerning the way in which my office was conducted generally?

A The idea I got and Mr. Sterly stated in so many
605 words to me, and that it was the model engineer office of the United States and my impression was that he meant to imply that it was carried on in accordance with the regulations and also with neatness.

Colonel Gillespie: Were you ever left in charge of the office?

A No sir, not of the whole office.

Q Who took charge during Captain Carter's absence?

A Well, I don't think Captain Carter was away more than two or three days at any time I was there and when he was away mail was forwarded to him.

Major Adams: Who was in charge of the office during his absence?

A I don't know that anybody was placed in charge. The

Chief Clerk ran his department and the other clerks ran theirs.

Colonel Gillespie: You mean to convey the idea that no definite instructions were left? I mean instructions so far as you knew?

A No sir, none so far as I knew.

Major Adams: How were the payrolls made up in the office—who made them up?

A I think Tom Connolly, the young Connolly, made them up.

Q What data did he have to make them up from?

A Most pay rolls, I think, were made up actually by the engineer in charge of the work. The amounts were filled
606 in at any rate, and the names placed in when they came in the office and I think they were mostly made up by the engineer in charge of the work. For instance, on the snagboat the roll was made up there and sent to the office to be completed. I don't think it was completed on the snagboat.

Q What was done on the snagboat?

A The amounts were filled in, the number of days rather, and the names of the men. That is my recollection.

Q Any other papers received from the assistant engineer to show that one of these pay rolls was correct?

A Yes sir, I think the reports of monthly operations—ten days reports rather, showed the number of men employed and the rates of pay received. I am under the impression that this was so.

Q Anything else?

A Well, I don't know of anything else except a letter of transmittal, which I think certified that the pay rolls were correct.

Colonel Gillespie: Are you giving information of your own knowledge, or simply impressions?

A This letter, Colonel, is rather impression.

Q You have no definite knowledge as to it?

A No sir, the answer to this last question.

Major Adams: How much time did you have to make yourself familiar with the papers in the office?

A I was at Savannah five months and I think at least
607 two and a half months were spent in the office.

Major Adams: Suppose that you had been in charge of the office and had to draw checks in payment of these rolls. How would you have satisfied yourself as to the correctness of the rolls?

A I think that I would have had to rely on the certificate of the engineer in charge of the work, unless I could have made a personal inspection.

Q Did you see any such certificates?

A Yes sir, I think so.

Q In what shape did they come?

A I answered that question, that my recollection was that it was in a letter of transmittal certifying to the correctness of the roll.

Q Did you see any time rolls?

A Yes sir, I think so.

Q What did the time rolls show?

A I would like to say in reference to the last question you asked, the question previous to this, my recollection is that I did see time rolls there.

Q Who made up vouchers in the office?

A Usually young Connolly made them up.

Q Where did he get his information upon which to make up the vouchers?

A He got the information for ordinary vauchers for expenditures from the bills which were certified to as being correct by whoever received the article for the Govern-
608 ment, either the assistant engineer, clerk, or others.

Q While you were examining these papers and making yourself familiar with the business methods of the office, did you take any steps or make any investigation to find out whether the men paid were employed?

A No sir.

Q Did you have any such opportunity?

A No sir, I did not.

Q Did you have any opportunity to examine the bills to find out whether the things paid for were received?

A In a few cases I did; the articles that were received in the immediate vicinity, for example; I was at work removing wrecks. I was not in charge of the work, but merely present on the boat when they were taking up the wrecks. I had an opportunity of examining all the goods received on that boat and ascertaining the number of men employed in the city, in the office and about the office or near the office.

Q Did you have time rolls?

A I do not remember.

Q Suppose that a man was employed in the city or about the city or near the office, how was he paid?

A He was paid on the office pay roll. That included all the clerks and other employes about the office.

Q Who certified to his employment?

A I do not know, I do not remember.

609 Q Was your investigation of the office methods or the business methods limited in any way? Had you any opportunity to find out about these things?

A Yes sir.

Q Did you find out?

A No sir.

Q Well, then, your impressions as to the correctness of the methods came not from your personal examination and investigation?

A Well, I made the examinations, I may not have gone into all the details as well as I should have done.

Q I did not want to bring that out, what I want to find out is what your impressions, as stated under Captain Carter's examination, arose from?

A Well, from my examination and from my conversation with the clerks of his office.

Q Give me the points, then, of your examination which tend to show that a man paid, worked, that the things paid for were received? Where did you get that information?

A In no case did I examine to see whether the things were actually received. I saw the certificates on each bill from the assistant who received the articles, that this bill was correct and that the goods were actually received. That was the form of certificate, I think, that the goods were actually received and the bill was correct.

Colonel Gillespie: Is that only for articles that came
610 under your own observation, or do you apply than generally?

A I apply it generally.

Major Adams: Was it possible for a man to receive pay who rendered no service?

A It would require a false certificate from some member of the office force in order for him to do it.

Q Was it possible for the Chief Clerk, Mr. Sterly, to make a false pay roll?

A I should think it would be.

Q Was it possible for him to make a fictitious pay roll with false signatures? What check would you have on that?

A I don't think there was any good check on Mr. Sterly's

own statements that this was performed, for work that he certified to.

Q Did he certify any pay rolls himself?

A I don't know whether he had a certificate to that effect.

Q What was his form of presenting these pay rolls to Captain Carter? How did he do it?

A Well, that was something I do not know, as I don't think I ever saw him present one, as Captain Carter's office was separated from mine.

Q Did you make an examination of pay rolls or vouchers in detail as to their correctness to such an extent that you satisfied yourself that the pay rolls were correct and just?

A I would like to know if you mean by that that each man there on the roll had actually performed the work for which he was paid?

611 Q Yes.

A No sir, I did not.

Q What is the form of certificate on the pay roll?

A I do not remember.

Q What is the form of the certificate on a voucher?

A The certificate from the engineer disbursing officer? I don't believe I can say what that is.

Q I don't want to confuse you about this matter at all. My object in asking the question is simply to find out whether you made such an examination of these papers as will enable you to form a correct opinion as to the business methods of the office, and in that, as to whether the men paid actually rendered service. Did you get any information in your examination that would enable you to pass an opinion on that subject?

A I should say that I thought I had made such an examination, but I noticed that it depended to a large extent on the faithfulness of the assistant.

Colonel Gillespie: Did Captain Carter at any time ask you to watch the operations of his office so that you might be able to detect anything wrong there in the way of false vouchers or false accounts or anything of that kind?

A No sir.

Q The examination that you made was with reference to the printed forms issued by the Engineer Department?

A And also those printed in his own office and in use there.

612 Q You were to familiarize yourself with the general forms adopted there?

A Yes sir.

Q But the specific application of those forms you had nothing whatever to do with except with the works solely under your charge on snags? In order words, you were not required to examine the time rolls as they came in, and not to compare the vouchers with those time rolls, nor to examine the vouchers after they had been certified for payment?

A That was part of the instructions to do that, but not to do it with reference to finding out mistakes, but simply to give me instruction.

Colonel Gillespie: Did you examine with a view to find out whether they were prepared in accordance with the bills and the time rolls?

A I compared them on several occasions to find that out.

Q Was it your duty to do so?

A No sir.

Q Therefore, you did not make it a general operation?

A No sir.

Major Adams: Here is a pay roll. When did you say you left Savannah?

A On the 27th of February, 1896.

Q Were you there in January, 1896? Do you know anything about that pay roll?

A I was present on the boat at that time.

Q What service did R. A. Rowlinsky render?

A I do not remember, sir. I see that he is marked as deck hand, but there were so many deck hands that I do not
613 recollect this particular man.

Q Do you know anybody in Savannah by that name?

A No sir, I do not. I cannot remember the names of any of the deck hands.

Q Did you make up the time roll for this snag boat?

A No sir, Mr. Burnett made it up.

Q How was the payment made there?

A I think it was made from the time roll. I think Mr. Burnett made up the time rolls on the ten days reports and also at the end of the month.

Q You say you were present on the snagboat at this time, January, 1896?

A Yes sir, that is, at Ramsborn Creek.

Q Do you remember this man? (Pointing to pay roll).

A No sir.

Q This man? (pointing).

A No sir, I do not remember either of those men.
Q Any man on the roll?
A No sir, I do not remember any man on there except Mr. Burnett.
Q How long were you on the boat?
A I was there, I think, about ten days.
Major Raymond: What became of the time rolls upon which these payments were based? Were they filed in the office?
A Yes sir, I think so.
Q Who kept the time rolls on the snagboat?
614 A Mr. Burnett.
Q He was the assistant engineer?
A Yes sir, he was in charge of the work.
Major Adams: Was the time rolls for this boat for January, 1896, approved by you?
A No sir.
Q Was it certified by you in any way?
A No sir, it was not.
Q Did you ever see it?
A No sir. I was not in charge of this work at all. I simply went down after the work was begun and stayed on the boat so as to watch the operations. I did not have charge.
Major Raymond. You went there for instructions?
A That is all.
Captain Carter: You stated you were not required to examine them for the purpose of detecting any false vouchers. Was there any reason why you should?
Colonel Gillespie: I suppose you mean irregularity?
Captain Carter: Well, irregularities. Did you see anything at the time you were there that made you suspect that there were any irregularities or violations?
A I did not.
Q If you had suspected that there were any irregularities being made by a clerk, would you or would you not, have examined the matter?
A I would have examined them very carefully.
615 Q For what purpose?
A To determine whether there was any such irregularity and to call your attention to it.
Q You said you were not required to examine into the specific application or the making out of the rolls, and to determine whether or not each man whose name is on the roll,

worked. Did you, or did you not, however, have every facility, if you desired to do this, to have made such an examination?

A I did.

Q Did you or did you not think when you were there that it was necessary to have made such an examination from your experience there?

A No sir, I do not think I should.

Q Had you been disbursing officer, from what you saw there would you, or would you not, have accepted the statement of the Chief Clerk that a roll was correct?

A If the Chief Clerk had been my Chief Clerk for ten years and I had found him always correct in that time, I should have been willing to take his certificate.

Q From your experience with my Chief Clerk what was the opinion you formed as to his faithfulness concerning the duties entrusted to him?

A I thought he was faithful—I should say he was very faithful, that was my impression.

Q Did he make any statements to you at any time
616 indicating, or were his actions such as did indicate to you, whether or not I believed everything he did was done properly? I mean in connection with his clerical work?

Major Adams: I don't understand that question.

(The last question was repeated by the stenographer).

A I don't remember whether he ever said anything to me or not about the confidence which you had in him, but my impression was that he thought you had very great confidence in him. That is all I can answer of that.

Captain Carter: You were asked whether or not you were permitted to have an opportunity to examine these bills. Did you or did you not have every facility in the office to examine them in every respect and examine everything that was done in that office, if you had desired so to do?

A Yes sir.

Q Did I, or did I not, give you the impression that I desired you to acquaint yourself thoroughly with every detail of the office?

A You did. I think this answers the question.

Major Adams: Did you say that you were left in charge of the office when Captain Carter was absent or not?

A I say I was not.

Q Do you know why not?

A No sir, except that I had just left the Academy a

617 very short time and I knew very little about the methods of the office.

Q At that time, in case of Captain Carter's death, who would have been in charge of the office?

A I would not like to say.

Q In case of Captain Carter's absence could you have taken charge of the office?

A I might have done so for a few days only.

Q The question is whether you could have taken charge of the office in his absence. Don't you understand that?

A I don't think I could sir.

Q Why not?

A Because there was a large amount of work there that I was not well acquainted with on the River and I should not have been able to say whether this work was properly done or not.

Q Who was able to say it?

A The Assistant Engineer.

Q Was he in the office?

A There were several in the office, the work was divided, each Assistant Eingineer had charge of a certain part of the work. Some of them were not in the office; some of them were actually on the Rivers.

Q Whom did you understand was in actual charge of the office then, when Captain Carter was absent?

A No one was put in charge.

618 Captain Carter: I might state that I always remained in direct charge of the office.

Captain Gillette: Did Mr. Sterly impress you as being an honest man?

A Yes.

Q Did he impress you as being devoted to Captain Carter?

A Yes.

Q Much so, or very little so?

A Much so.

Q Do you think he would be loyal to Captain Carter if anyone said anything against Captain Carter, or Captain Carter was in trouble? Was that your impression?

A Yes sir, it was.

Q Was he a man of strong personality, or not? Strong character?

A I don't think that I have an opinion on that at all or did have.

Q Do you think from the impression you got that if Captain Carter told him to make any little irregularity in the office records, he would do it or not?

A Well, as a matter of fact, that never occurred to me, so that I don't think I would have said one way or another, and could not have answered that question at all, because it never would have occurred to me that Captain Carter would have suggested such a thing.

Q Did you think that he would do anything that was
619 not according to regulations in his clerical work and hide it from Captain Carter?

A No sir.

Q Did you think he was a man capable of any deep scheme which was to be worked out far in the future?

A No sir.

Q He seemed to have great confidence in Captain Carter?

A Yes sir.

LIEUTENANT THOMAS H. REES, was called to the stand and examined as follows:

Colonel Gillespie: Lieutenant Rees, will you please state to the Board the period during which you were assistant to Captain Carter?

A I was with him from early in November in 1889 until about the last of April in 1893.

Q Where was your office during those services?

A It was in the same building.

Q I don't mean the building, but the town?

A In the Southern Bank Building in the City of Savannah.

Q What was the nature of the duty required of you by Captain Carter?

A My duties were very varied. I did not have any special work to do all the time I was there, but went from one
620 work to another and made inspections of the work, made the annual examinations generally while I was there; made some of the more important surveys.

Q Did you have charge of any special work of construction?

A I did not have charge of it, I was detailed to lay out some of the work of construction and inspect it.

Q Lay out what kind of work?

A Some of it was the work on Savannah Harbor. I laid out the locations of some of the dams on the north side of the River by Long Island; I don't remember now just what they were. I could point out the place on the map.

Q You had no immediate charge of construction?

A No sir, except in the way of inspection.

Q Were you in charge of any work?

A Yes sir. I had the repairs, had charge of snag boats, the control of snagboat work on the Rivers for a part of the time.

Q Did you have charge of the construction of any work of importance?

A No sir.

Q Did you have any facilities for knowing what that work was?

A Yes sir.

(Lieutenant Rees was excused temporarily in order that Captain Black might add something to his testimony; but as Captain Black was not yet ready, Lieutenant Rees was recalled and examined as follows:)

Colonel Gillespie: What improvements were you familiar with?

Lieutenant Rees: I was familiar with all the work going on in the District.

Q Have you seen the specifications of the work that was carried on since you left there in 1895?

A Yes sir, I have seen these for 1896, but I did not have time to study them.

Q The specifications of 1896 for Savannah Harbor called for three different types of mattresses. Are you sufficiently familiar with the cost of such work in that vicinity to know whether the cost of these several types is relatively the same?

A I am sufficiently familiar with that work, and I should say—

Q Was it right and proper to call for a single price for the delivery—

A I did not finish my answer. I should say to the best of my judgment and belief the cost would be practically the same. Of course they might vary, depending upon the actual manner of construction, some variations being allowed by the specifications; one might be made to cost more or another

might be made to cost more; but practically, I should say,
622 that there was no material difference in the cost of those three types.

Q On reading those specifications, would you be able to determine what special type Captain Carter expected to use or wanted bidders to offer proposals for, and could you intelligently have bid without a conference with Captain Carter, or an explanation from him?

A I could not tell, of course, what kind he would expect. So far as the different types were concerned, I think I could bid a uniform price on those three and expect to make about the same profit out of whichever one was called for; but, I dont think I would bid on a work of that kind without having some conference with the officer in charge of it.

Q You make that statement on the ground that the specications were obscure?

A No sir, I would not bid on any work without a personal examination of it.

Q I was referring to the clearness with which the specifications were drawn. The specifications for Savannah Harbor of June 6, 1896, say that the quantity of mattress work required for canvassing bids for Savannah Harbor would be 350,000 square yards. Do you think it right and proper for Captain Carter to increase this quantity to 1,360,000 square yards, the quantities of other required materials being correspondingly reduced, without the knowledge of the Chief of Engineers?

623 A I dont think it would have been if the extra amount that would be required was known as the time the 350,000 square yards was first exceeded, or if there had been any attempt to conceal from the Chief of Engineers the fact that this large amount was being used.

Colonel Gillespie: Do you find—

A I would like to finish that answer, Colonel. I know that the Division Engineer was interested in the work down there and had inspected it and knew the character of the work that was going on and was in accord with Captain Carter's ideas of it. I have heard him commend the work and he stated to me on one inspection that I was very fortunate to serve in a District where such important works were being carried on under such an able and energetic officer as Captain Carter. I believe, therefore, that there was no attempt or idea of keeping from the Chief of Engineers or Division Engineer the fact of this increase of the amount, and there could not

be inasmuch as it had to be reported every month, the actual amounts that had been used; and knowing that the Division Engineer, who afterwards became the Chief of Engineers (Craighill), was in accord with his purposes and aims and his policy on that work, I cannot see that there was anything wrong in not making a special report to the Chief of Engineers, of this fact of the increased amount under the circumstances.

Q When he had increased the amount four fold over
624 his authority?

A Not when those amounts were reported every month, and while I was there the Division Engineer was down every year, at least, making inspection and knowing just what was going on.

Q Does the District Officer get his instructions from the Division Engineer for conducting his work?

A I dont know whether he does or not; but I should suppose that the Division Engineer ought to have something to say in the construction of the work if he desired.

Q Who makes the project for the work?

A The District Officer.

Q Whose approval on that project is the authority for commencing and conducting the work?

A That of the Chief of Engineers.

Major Raymond: How was this increase made, all at once or little by little?

A It was made little by little, as the contingencies arose that required it.

Q When this increase over the original amount commenced—could it have been anticipated that the increase would be so large?

A I dont think that the amount could have been anticipated.

Major Adams: Mr. Rees, do the specifications under which bids are invited, invariably form a part of the contract?

A Yes sir, I believe they do, all that I have known of do.

625 Q In case that you may desire to increase the amount of material wanted, in case that you may find it necessary to order other things or other work done, is there a provision in the contract itself for the modification of it?

A There is, yes sir.

Q Who has to approve that modification?

A Any material modification has to be approved by the Chief of Engineers, I believe.

Q Do you know that?

A Well, I am sure that any material modification would have to be approved by the Chief of Engineers.

Q How can you modify a contract?

A By changing the character of the design.

Q Oh, I am talking about the contract, the legal instrument signed by the engineer and the contractor. How can you modify that?

A By a supplementary agreement.

Q Who approves that?

A The Chief of Engineers approves that.

Q The regulations require the Secretary of War to approve it?

A I did not know that.

Q Would it be proper, then, in case of putting in material, that cost less than the material provided for in the specifications, to make a modification of the original contract by a supplementary contract?

A Yes sir, if it cost less it would be proper.

626 Q In case you wanted to put in more material than is provided for by the contract, would it be proper to make such a modification of the contract?

A I dont see why a supplementary agreement would be required in that case if it is not any addition to it.

Q It is required, in fact, by the regulations; that is the only way you can modify it.

A I did not know that.

A In that way it would be brought to the knowledge of the Chief of Engineers, would it?

A Yes sir.

Q Is not that the proper way to bring it to his knowledge rather than by monthly report?

A I think that is probably the way that I would have brought it to the knowledge of the Chief of Engineers, because I would not have felt that with the amount of experience that I had at that time that I would like to have undertaken that responsibility on my own account in making that change; but, in Captain Carter's case I believe he felt that he had been allowed a large discretion. I know that he had, and I dont know that this was any more than he thought would be approved by the Chief of Engineers.

Q You understand that any discretion which is allowed the constructing officer permits him to modify a contract?

A No sir, not to modify it materially as to the manner of construction or as to the amounts.

627 Q Have you a definite knowledge of the kind of mattresses used in the work on Savannah River?

A Yes sir; I have.

Q Have you read the specifications that accompanied the different contracts?

A I am familiar with those of 1892 and I have just read over those of 1896. I have not studied them carefully but they appear to me to be much the same as those of 1892.

Q What form of mattress was used in this work?

A It was the third design of the specifications.

Q Did you see any of these mattresses?

A Yes sir, I saw them.

Q Where they built in accordance with the specifications for the third design?

A They were not all of them strictly in accord with the description given under the third design.

Q What was the departure from the specifications?

A Some of them were built in successive courses without stone between the courses, as a block of several courses with a single layer of stone on top.

Q Were the single mattresses built in accordance with the specifications?

A Most of them that I remember were. There was one design which I believe varied from it in the fact that the gril-? lage was not used, was left out, the pole grillage. There was substituted for that several layers of fascines, I think
628 three or four in a width of 15 or 20 feet of wire, which was woven over and under the fascines as they were successively put into the mat.

Q What was the actual cost of the mattresses used compared with the cost of the mattresses specified in the contract?

A I cannot say definitely, but I dont see any reason to suppose that it would vary materially from the cost of the mattress specified in the third design, or of the others, which I think were about the same.

Q Did you ever make any estimate of the cost of the mattress here?

A No sir, I have not figured it out, I have not tried to figure it out accurately. I dont know as it is possible to

get a very close result without experience, without actually constructing them.

Q Have you a sufficient knowledge of it from actual contact with it to make such an estimate?

A I think I have. I could state a sum which I think would come fairly close to the cost of that kind of work.

Q Will you state it?

A I should say that the design actually constructed, that design with the wire substituted for the grillages, would cost in the neighborhood of 65 to 75 cents a square yard.

Q In answering one question you spoke about the work being carried on under the direction of the Division Engineer, is that so?

629 A Yes sir.

Q Do you know what the regulations of the Corps of Engineers provide in that matter?

A No sir, I dont remember exactly.

Q You seem to be in some doubt. There is a paragraph in the regulations that prescribes exactly the duties of the Division Engineer. Do you know what that is?

A I dont, no sir.

Captain Gillespie: I would like to ask Lieutenant Rees if he remembers at the time at the point in the construction when 350,000 square yards was reached? Do you remember how much was done and how much remained to be done under the project?

A No I do not.

Q Then you dont know that there might have been 350,000 yards more to do without any extra requirements?

A I dont understand that question.

Q The work might have been done or one-tenth done, or any other fraction. When 350,000 square yards had been used, if only a small fraction of the work projected had been completed, the officer would know about how many yards would be required, provided no excess, no undue requirements developed? You dont know when that point was?

A I dont know definitely. I probably did know at the time just about the time when that amount was reached.

Q Supposing it were about half done. the work was about half done. Would you consider it, if you were doing it,

630 your duty to make a formal report to the Chief of Engineers for authority to exceed the amount, as the requirements would then indicate?

A I dont know that I could tell when the work was half done whether any more would have been required or not.

Q Assume that you have already used 350,000 square yards and the work is half done, or less, or a little more, would you consider yourself justified then in going on using these enormous amounts without making a special report to the Chief of Engineers?

A If I could have foreseen that enormous amounts would be required to finish the work I dont think I would have gone on without making some special report.

Q Could you avoid foreseeing that a large amount would have to be used beyond 350,000 yards?

A Well, that would depend upon the character of the work which was yet to be done. If that work was in the specifications and it was the original intention to construct it largely of stone, and it was found when the work was begun that fascines would be more satisfactory and that additional work was required, I think that the amount might have been exceeded without special authority to do so, in as much as the specifications provide that these amounts are only approximate and may be increased or diminished.

Q On what do you base your estimate of 65 to 75 cents for the wire woven mattress?

631 A It is principally a matter of judgment with me because I have not figured accurately on that, but just looking at the work that would have to be done to make those mattresses; and comparing them with the other kind, which I have figured on, I cannot see that it would vary materially from them.

Q Did you make any estimate as to the cost per square yard of these thick mattresses, eight or ten courses thick?

A No, I have not tried to figure on the actual cost.

Q Then your figures simply apply to those woven wire mattresses?

A That is what I was asked to give and what my figures refer to.

Q Was a small or large percentage of the mattresses used, of the woven wire type?

A Up to the time I left there a small percentage of the mattresses were of this woven wire type.

Q Are you prepared to give any estimate of the cost per square yard of the mattresses used in many courses?

A I can give my judgment on it.

Q But you have no facts to base it on?

A Oh yes, I have facts to base it on. I have figured on similar work of that character and I can state closely what that character of work would cost.

Q How much do you think it would cost per square yard?

A That would cost from 70 to 80 cents a square yard for mattress of that design, the design actually used.

632 Q What wages for common labor do you allow in that amount?

A The labor there costs from $1 to $1.25 a day.

Q That is what you figured on?

A Yes, $1 per day.

Q A day of ten hours?

A Yes.

Q What do you estimate the cost of the plant required to do the work?

A To do all the work required?

Q To do that work of putting in those mattresses referred to in your estimate of 70 to 80 cents per square yard.

A About $30,000.

Q What do you estimate the cost of brush per thousand yards of mattress, the brush growing or per acre of brush, in the estimate which you used?

A Well, I don't know that I would figure it in any of those units that were given.

Colonel Gillespie: I think you might suspend all that.

Captain Carter: Do you think that the type of mattress actually used was any cheaper for the contractor to construct than the types mentioned in the specifications, assuming that this type would be different from that type?

A I don't think it did differ materially in cost from this.

Q If it were intended to permit the contractor to use the cheapest form of mattress that would accord with the specifications, which form do you think would probably be selected?

633 A Well, of the brush mattress, I think the second design could be constructed perhaps a little more cheaply than the third design allowing for the minimum requirements which are there specified. If the maximum requirements specified were met, it would probably not be cheaper.

Q Have you been around the mattress camps and on the works in Savannah Harbor, and are you thoroughly familiar with the conditions attending the work under my charge during the period you were my assistant?

A I have been in the mattress camps and on the works

frequently and I am thoroughly familiar with the work carried on.

Q Do you think that the type of mattress actually used by me does differ materially from the third design mentioned in the specifications?

A I don't think it does differ materially as to cost. Of course leaving out the grillage and substituting wire is quite a different method of construction.

Q I mean the method of building the mattresses on top of one another?

A No, I don't think that differs from the method mentioned in the specifications. Those of 1892 I remember, stated in terms that one or more courses of brush mattresses would be used and some stone. It does not say that the stone would be on each of the mattresses.

Q When did you last see one of these mattresses?

634 A I saw them right up to the time I came away; in 1893, I think the last time I saw them was when I was sent down to make an inspection when Mr. Ensey was Inspector and there was apparently something wrong with his reports, which did not tally up. I was sent down by you to find out what the trouble was and to see if there was anything wrong in his inspections, whether he was favoring the contractor, and to ascertain just what was the difficulty.

Major Adams: What year was that?

A That was in the spring of 1893, a little while before I left.

Captain Carter: Do you know of any instance where any Inspector would have been permitted in any way to favor a contractor?

A I know of no instance. I am sure in fact that any attempt of any Inspector to favor a contractor would have led to his immediate dismissal. I know that one was dismissed because he was not on the ground where he could see what was being done by the contractor.

Q What inspector was that?

A Inspector Felber.

Q You have stated that the type actually used did not cheapen the cost to the contractor. Do you think that the specifications authorized, therefore, the minor modifications that I have made without entering into a supplementary contract?

635 A I do.

Q As a matter of fact, familiar as you are with the

conditions existing there, would it have been desirable to have attempted to enter into a supplementary contract, in your opinion?

A Well, I think in general, it was rather a risky proceeding to try to enter into a supplementary contract. If it was intended or desired to get a lower price, I believe the contractor would immediately jump at the chance to raise his price, if he was told there was going to be any change made in the construction or in the amount.

Colonel Gillespie: Do you know what a supplementary contract is

A It is an agreement entered into between the United States and the contractor to do certain extra work or to do the work in a little different manner at a different price from that agreed upon in the original contract.

Q How would that give the contractor an opportunity of raising his price without a mutual agreement with the engineer?

A It would give him an opportunity to demand a greater price or else not enter into a supplementary contract.

Captain Carter: Are you familiar with the locality and the cost of construction of similar work at Cumberland Sound?

A I am.

Q Are you familiar enough with it to express an opin-
636 ion as to whether or not $1.10 per square yard for mattresses is reasonable or excessive?

A I think I am familiar enough with that, I made an estimate of the cost of improving Brunswick Harbor by works of similar designs to those at Cumberland Sound. I have figured closely on the cost of that work and I believe my estimate for brush mattress in the large quantities that would be required, was $1. per square yard.

Q The same kind of mattresses?

A The same kind. I think I stated in my report that that was contemplated—the same kind of mattress to be used in all work as for Cumberland Sound.

Q Are you familiar with the character of work of fascines entering into the construction of these mattresses?

A I am.

Q Were they properly choked?

A Yes.

Q Will you describe the form of choker used

A The one I saw in use down at Cumberland Sound was

a rope with a loop in each end, long enough to go once and a half about around the bundle of brush, and two levers were placed in the ends of the rope, and by bearing down the rope was drawn tight and the fascine choked.

Major Adams: Will you give the date of that, approximately?

A I cannot remember just when I was down there. I was down there frequently on surveys and examinations.

637 Q How long ago?

A I cannot remember one occasion.

Colonel Gillespie: Major Adams, evidently, wants the year, not the special month.

A The one occasion that I particularly remember was when I was down there making an annual examination of the work done there and I think it was the last winter I was there.

Colonel Gillespie: That would make it 1892 or 1893.

A Yes sir, it might have been the year before, but it seems to me that that was the time when I remember of being there.

Major Adams: Have you any knowledge of the mattresses used since 1893?

A No sir.

Captain Carter: What measures the value of a fascine for this purpose? Its bulk or its weight?

A It is bulk that is all that is required.

Q Can any intelligent comparison or estimate of value be made by comparing its weight?

A No, I dont think that element enters at all into the question.

Q As a matter of fact, using, for instance, myrtle or black jack, will, or will not, the weight vary between two and three hundred per cent, according to the character of the material used?

A It would vary quite largely. Black jack is heavy and myrtle is light.

638 Q Suppose the fascines were made only to contain woody matter. Would that, or would it not, be a difficulty in this kind of work?

A I dont think it would. I think the advantage of the fascine is that it will catch and hold the sand and sediment in the water and fill up with a material which is much more permanent than the woody fibre, and that the extra bulk that is obtained in this manner is so much gained and saved without cost.

Q Can any intelligent estimate as to the relative value of two mattresses made of brush fascines be made by comparing their weight

A Of their cost or value?

Q Of their value in the work. Can any intelligent estimate of the cost be made in that manner, the wood varying in weight?

A No, it would cost just as much to make fascines if the material was heavy as it would if the material was light, the amount of material being the same.

Q Are you familiar with the class of stone known as Florida stone?

A I am.

Q Will you state whether or not in your opinion it is a desirable stone to use at Savannah or Fernandina?

A I think it is a desirable stone to use for the reason that it becomes covered in a year or two with a shell
639 growth which binds the stone together and increases the volume of the work; whereas harder stone, like granite or limestone, compacted limestone, do not acquire the shell growth but remain smooth and slippery and more liable to be displaced by waves than the lighter stone after it has been bound together by a growth of shells and barnacles.

Q Is there another reason why it is more desirable—on account of its specific gravity being less?

A The lighter stone would, of course, cause less settlement of the work.

Q Taking the actual cost to a contractor of fascine mattress, brush mattress, what do you consider would be a fair allowance for contingencies and the contractor's profit? In other words, what would you consider would be a fair increase over the actual cost?

A To include risks and profit?

Q Everything.

A On an ocean bar I should say 25 per cent would be not at all excessive.

Q May not this vary within very wide limits?

A It may.

Q Does the price bid by a contractor, if low, necessarily indicate that the contractor is making a profit on the work?

A It does not always.

Q Does the price, if higher than the former bid, necessarily indicate that it is excessive?

A No, it does not.

640 Q Were you present when any proposals were received for construction work in Savannah?

A At the opening, do you mean? Yes.

Q Have you ever heard of any contractor or prospective bidder, who felt that he had not received thorough information, that there was any unfairness whatever in any respect?

A I have never heard any complaint of any unfairness or lack of information from work down there.

Q Are you familiar with the method of keeping accounts in the Savannah office?

A No, I am not very familiar with the method there. I was not in the main office very much. I know in general the method.

Q Were you in the office enough and in the District long enough to know what would have occurred had any clerk, anyone employed there, done anything improper, had that came my knowledge?

A I believe that any dishonesty of any kind on the part of any employe in the District would have led to his immediate dismissal. I feel sure that no connivance at wrong, no favoring of the contractors, no irregularities which involved dishonesty of any kind, would have been contenanced by you. I know of a case in which Mr. Sterly was threatened with dismissal but on his explanations and excuses he was pardoned at the time with a warning that if anything of that kind happened again, he would be dismissed.

Q What was that?

641 A That was a case that arose in the Cumberland Sound work where Mr. Sterly had made a mistake in not deducting the ten per cent from the monthly payment of the contractor. In order to cover his mistake he wrote down to the Inspector at Fernandina asking him to increase the amounts that he had reported by an amount sufficient to make the payment a proper one with the ten percent deducted. That was done by the Inspector.

Q Who was the Inspector?

A I dont remember who was the Inspector down there then, whether it was Coulson or Cooper.

Colonel Gillespie: What year was this?

A I think in 1892. (Addressing Captain Carter). It came to your knowledge through the contractor, I believe. You told about it afterwards. You spoke to him about the

large amount of work he had done and he answered that he did not know that he had done an unusual amount; that he had done about the usual amount, and it came out from that conversation that the amount that he had supposed had done in was different from the amount that had been reported to the office.

Major Adams: What was the amount of money involved in that? What was the overpayment?

A I dont remember, but it was a good month's work for that contract. I dont remember what the two amounts were. I figured up just what the contractor had actually been paid and just what he should have been paid, and then found that the two amounts finally agreed after it had been adjusted
642 and Captain Carter in his monthly report stated that through a gross clerical error in his office, this mistake had been made and that the payment for the succeeding month would have to be corrected to allow for the over payment of the month before.

Major Adams: Do you say that the Chief Clerk, Mr. Sterly, attempted to make up a voucher with an increased amount of work, or did he make up such a voucher?

A He did on reports from the Inspector that he got by writing to him and asking him to put in some of the succeeding months work of the previous month, so that his error might not be detected.

Captain Carter: So as to keep his error from me?

A Yes.

By Major Adams: Q Who first detected it?

A Captain Carter, by this remark of the contractor. He told him that he had put in a big months work down there at Fernandina and he said no, he did not think he had done any more than usual, and Captain Carter looked up the records and found the error.

Q As I understand you, then, Mr. Sterly then made up false vouchers?

A Yes sir.

Q What year was that?

A I think it was 1892. The monthly reports will show just when it occurred.

643 Major Raymond: As I understand it, Mr. Rees, his intention was not to make this voucher a permanent one, but to take it out of the month succeeding and put it back where it did not belong, in the preceding month?

A Yes sir, that was the change.

Captain Carter: So as to keep his mistake from my knowledge?

A Yes sir.

Captain Gillette: One or two little points: you testified a moment ago that you thought lighter stone was better for work of that kind, what do you mean by that kind. That is, are you limiting this to the Savannah River, or would you use the lighter stone for a breakwater say at the mouth of the Savannah Harbor?

A I would use it in a breakwater at the mouth of the Harbor, if I used brush in the mattresses.

Q Do you think lightness is a good thing to resist wave action?

A If it will stay until it is bound together by shell growth it is good for that purpose, not on account of its lightness, but on account of the other fact.

Q Do you think from your knowledge of the conditions, do you think it would be safe to use it in an exposed place, like a breakwater at the mouth of the Savannah River?

A I do. I know it has been used in Fernandina in exposed places.

644 Q That is a different place.

A The exposure is just as great.

Captain Gillette: Leiutenant Rees has submitted an offhand estimate of the cost of this mattress work. We have several estimates that are submitted by the subordinates and employes that I found in the office, which seem to be radically different from Lieutenant Rees's estimate. I would like to ask if the Board could not request Lieutenant Rees to make out his estimate in detail, the others have done so. Lieutenant Rees should be asked to take an eight course mattress and detail an estimate of all the elements of cost that enter into its construction. Their estimate, as submitted, was 47 cents per cubic yard (square yard) for brush work, mattress work built like that photograph that I submitted of the one that was built under my charge. They made 47 cents per square yard for that.

Major Raymond: Lieutenant Rees only estimated on the design actually built previous to 1893. Your figures were for 1896.

Captain Gillette: Their estimate of 47 cents was for an eight course mattress, trimmed, perhaps untrimmed, tightly choked brush, choked until the sticks were solid. Lieutenant Rees submits an offhand estimate of 70 to 80 cents per square

yard for very loosely packed brush, as I understand from my subordinates. Now I would like to ask Lieutenant Rees to simply state the elements, the cost of everything upon which he bases that estimate, so that the Board can conclude what was a fair cost, so that they can go into details and see where the cost comes from.

Colonel Gillespie: Is it the wish of the Board that the estimate be made?

One Of The Members: It is.

Colonel Gillespie: Will Lieutenant Rees make it if it is convenient to do so?

Lieutenant Rees. I will. May I ask when it is desired by the Board?

Colonel Gillespie: Just as soon as you can prepare it.

A I intended to go back to West Point when I got through here.

Captain Carter: Do you know Mr. Giesler?

A I do.

Q What opinion have you as to any estimate of cost of any construction made by Mr. Giesler?

A I think Mr. Giesler was a very unpractical man, if I may use that term. He was no good at all in the field with men. He was always getting into difficulty with them, starving them and having rows with his assistants, and I dont think that he has sufficient judgment and common sense in the practical details of construction to make a very close estimate of the cost.

Colonel Gillespie: What was he good for?

A He was excellent as an investigator working up the results of notes of surveys or of tidal observations, and in studying up subjects which were of a more scientific nature, he was very valuable at that.

Major Raymond: Do you think he was theoretical, not practical?

A I think he was, that was my opinion at the time I knew him.

Captain Carter: Do you remember Mr. Hale, an Inspector by the name of Hale?

A No.

Q Do you remember a Mr. Cooper?

A I do.

Q Could you form an opinion as to what any estimate of cost of Mr. Cooper's would be worth?

A Well, I dont think I would have taken his opinion if it had differed from my own.

Captain Gillette: Was he a practical man?

A I remember him as a good man to handle boats, ropes and tackles and things of that kind, handling lighters on the River, and I think he was a good man for that kind of work. He had been engaged in that kind of work a good deal and that was the capacity in which I saw him. From his reports that were submitted of work that he had done, I did not form a very high idea of his intelligence. His reports, I think, were not submitted by Captain Carter, nor included in his own reports, but were re-written either by himself or by me.

Captain Gillette: Do you think he earned his salary?

647 A I think he did.

Q Doing what?

A As in the line in which I have stated, in handling large forces of men, large gangs, and in directing the construction of the work.

Colonel Gillespie: Was he a reliable man?

A I always thought he was.

Q Upright and fair?

A So far as I knew.

Captain Gillette: Was he a practical man?

A Yes.

Q Now, your objection to Mr. Giesler as an estimator of the cost of mattress, is that he was unpractical. What is your objection to Mr. Cooper as an estimator of the cost of brush mattress?

A Simply that I dont think that he is a very intelligent man, except in just the lines of work he has had in his charge.

Captain Gillette: What opinion did you form of Mr. Sterly's character? Was he honest?

A I always supposed that he was honest except as evidenced by the case which I have cited. I was disappointed when I found out that about him.

Q Did he appear to be fond of Captain Carter?

A He did.

Q Did he seem to have great confidence in Capt. Carter?

A He did.

Q After the event that you spoke of, do you think he

648 would have dared to put anything on his record that he submitted to Captain Carter that was not true in accordance with its appearance?

A Well, that all depends on what he thought the chances of detection were. I dont suppose he thought that there was any chance of detection in that case.

Q Having been detected in that case, do you think he would dare to repeat it?

A I dont know how that would affect him.

Major Adams: Do you know of his having made up any false vouchers or fictitious payrolls?

A No sir, I do not.

Q Did you ever have the opportunity to examine his payrolls and vouchers in order to find out just that?

A No sir, I have seen them and looked over them, but never with that object specially in view.

Captain Carter: Could you have done that if you desired?

A Yes.

Q Did you or did you not have ever facility to examine everything in the office?

A I did. In fact I did at one time, when I first went down there, go to the Chief Clerk and ask him to show me how the papers were kept and go through them with me.

Major Adams: What methods did you have in the office at that time to verify the accuracy of the pay rolls?

A I dont know that there was any check except the 649 reliance upon the Assistant Engineers and the clerks.

Q Was it possible for Mr. Sterly to make up a fictitious payroll himself?

A I think it was possible, yes sir.

Q Did you have time rolls certified to accompany every pay roll?

A Yes sir.

Major Adams: Certified by him?

A By the Assistant Engineer or the foreman on the work.

Q How about the people employed in Savannah?

A I dont remember who certified to the rolls of the employes right there in the office.

Q Did you ever know or hear of articles being purchased for the office or for the United States and payment made by use of the payrolls?

A No sir, it never came to my knowledge. If that was done I never knew anything about it.

Captain Carter: You were there four years?

A Nearly four years, yes sir.

Q In that time would you be able to form an opinion as to

what would have been countenanced by me in the office? Would you or would you not?

A I did. I had a very decided opinion as to that.

Q Do you or do you not know whether or not, if I had known it, any irregularities whatever on the part of my employes, would have been permitted?

A I am perfectly certain, so far as my own impres-
650 sions and my knowledge of Captain Carter are concerned, that no irregularities of that kind would have been permitted.

Major Adams: What is your impression as to Mr. Sterly, the clerk?

A I thought him to be a good clerk and to have a good knowledge of papers, I never had a high opinion of his character.

Q Was he a man to be trusted?

A I never saw anything except that case I have mentioned, to cause me to doubt or to suspect that he could not be trusted.

Q Did you know Mr. Connolly, also employed in the office?

A Yes sir.

Q What is your opinion about him? I believe there were three of them. Do you know all of them?

A I remember two of the Connollys. I remember M. A. Connolly and J. B. Connolly.

Q What was the other Connolly's name?

Captain Carter: M. N. Connolly.

Q What was your opinion about him, M. A. Connolly?

A I think he was a very good clerk, a very efficient man. I was never thrown with him so as to have any knowledge personally of his character. I have always thought him to be a good honest man.

The Board adjourned until 2:30 P. M.

651 The Board met pursuant to adjournment, present the same as before.

MR. WILLIAM W. HEGEMAN was called to the stand and examined in behalf of Captain Carter, as follows:

By Captain Carter: I stated in here (referring to the stenographer's minutes) on page 254 of my book, in answer to a question as to whether I had ever received a letter or

telegram from Mr. Hegeman, I said that I did not remember, but that I had met him and knew him some years ago, in 1891 or 1892 when you were connected with the East River Tunnel Company—I dont know whether you were connected with the East River Tunnel Company—is that correct?

A Well, I had something to do with the Company, merely as a consulting engineer.

Q I was asked if you were associated in any way with the Atlantic Contracting Company or with the individual members of that Company, and I said I thought they contemplated hiring you for some work they were doing?

A That is a mistake, I never had any connection with them whatever.

Q Then I was asked if I had any business relations with you and I said that I may have had some correspondence with Mr. Hegeman because he wrote to me, or I saw him, I feel absolutely sure, and I was asked (reading from page 259,
652 stenographer's minutes):

"Q You have had no business relations with any one of them?"

and I said:

"A No I contemplated at one time having some business relations with Mr. Hegeman; I also contemplated having some business relations with A. M. Newton, but no money that I remember has ever passed between Mr. Hegeman or Mr. Newton or between any member of the Atlantic Contracting Company, Hughes, Bangs, Gaynor, Greene and myself."

I said in here that I contemplated having some business relations with you, do you remember anything about that?

A Why, there was some talk one time several years ago in relation to some railroad which never got further than a sort of a general chat about the proposed works and the works themselves never materialized.

Q At what stage did the talk occur?

A Why, at one time we had a matter up in southern Ohio, a partially completed road which I endeavored to finance and complete, and the matter came up something like this:

It was proposed to have another railroad guarantee the bonds, if possible, and I saw some of the officers in relation to that and I think, at my request, Captain Carter saw one, or two officers possibly, or another corporation in relation to guaranteeing these bonds; but it was never consummated, never carried out.

653 Q Was Mr. Gaynor, Mr. Hughes, Captain Greene or Mr. Bangs associated in any manner in this matter?

A No, not at all.

Q I was asked if I had ever received a letter from yourself calling for checks or for payment, and I said:

"For the Atlantic Contracting Company? Not that I remember of. I remember Mr. Hegeman but I dont remember his having any connection with the Atlantic Contracting Company."

Do you remember anything about that matter?

A About the check? I dont remember writing you. Possibly I might have telegraphed you in relation to a check.

Q What check?

A As I understood it at the time, it was a check in payment for some contract work at Fernandina of Gaynor, of one of the Gaynors, which was desired here in New York. I think Captain Greene spoke to me about it. He was going away, he asked me to telegraph you or write you, and I forget which it was, but my impression is that I telegraphed you in relation to sending on the check here for the Fernandina work. As I understood it it was a check for the current work, the monthly estimate check.

Colonel Gillespie: Why should Captain Greene ask you to attend to it?

A I had a desk in one of the offices of the Captain and he spoke to me when he was going away and he asked me to attend to it for him.

654 Colonel Gillespie: Were you partners in any enterprise that would justify him in asking you to do that office, that favor for him?

A Not at that time, but I think in less than a year we were interested together in a contract, that is, Captain Greene and myself.

Colonel Gillespie: A Government contract?

A No sir.

Captain Carter: I was asked concerning a company called the Empire Construction Company a question in which it was stated that a certificate, number 10, five shares I think it is, W. W. Hegeman: I was asked: "Is this the same Hegeman that I was asking informatuon of yesterday?" Do you remember anything about that?

A Why, I believe I did have five shares of stock, or some shares of stock in the Empire Construction Company when the Company was organized, some stock in the regular shares of the Company—enough for the purpose of organization, merely nominal stock.

Q Have you that stock?
A No, I have not.
Q Have you ever had it?
A No.
Q I was asked about what the Company was organized for and I said what I thought. I was asked on page 260: "Do you know anything about the organization of the
655 Empire Construction Company?" I said, as I understood it, the Empire Construction Company as an organization is not in existence. I dont know anything about the details of the business. I only know that they talked of organizing it for the purpose of building the Adirondack Railroad.
A No, the Adirondack road was not built under the auspices of the Empire Construction Company at all. My impression is that it was organized for the purpose of building a sewer somewhere, either here or in New Jersey.
Q Do you know who the stockholders in that Company are?
A I only know Greene is interested. He was President, I think. I never had anything to do with the Empire Construction Company, so I dont know much about their affairs.
Q Have we ever had any business relations?
A You and I?
Q Yes.
A None whatever, none at all, so far as I remember. I remember asking you to see a manager of a railroad corporation once in behalf of a matter in Ohio, and further than that—that in fact is as far as it ever went. That is the only relations that have ever been between us.
Q Have I ever had any interest in anything that you ever have been interested in?
A Not a thing in the world.
A I think that covers all the case, as far as I know.
Colonel Gillespie: You spoke about that Adirondack
656 Railway, did you build any of that road?
A Yes, sir, we ballasted some of the road.
Q You say "we". What Company was that?
A Captain Greene and myself originally; afterwards a third man came in.
Captain Carter: Would you mind saying who the third man was?
A No, certainly not. It was John F. Gaynor.

Colonel Gillespie: How were you brought in contact with the owners of that Railroad?

A Me personally?

A Yes, or as a company or as a partnership.

A Well, one of my old men, an old foreman, a superintendent of mine, was employed on the construction of the road, the grading, and through him I learned of certain work that was to be done, namely, the ballasting, and in the ordinary course of business I began working it up to a point where a proposition could be made.

Q What year was that in?

A In the spring of 1892. I secured a contract.

Q Do you know whether Captain Carter at you request wrote any communication which brought you in contact with the President of this Road?

A No. I am quite sure he did not.

Q Did he write you any letters of introduction to the President of the Road or any of the Directors?

657 A No, not at that time. Later on I think I had a personal letter to a Mr. Rossiter which I never used.

Q What was that for?

A That was for the old Ohio matter which came up again. Originally, I failed to get the bonds endorsed and after a lapse of two years, perhaps more, I undertook to have a traffic contract made in such a way as to strengthen the securities as much as possible. It was in relation to leading up to a possible contract that I asked for a letter to Mr. Rossiter.

Q Will you explain who he is?

A He is one of the financial officers of the New York Central Road. The point I wished to gain was a traffic arrangement between what was known as the Big Four Road and this little road in Ohio, but I succeeding in gaining what I wanted without having to use Mr. Rossiter's letter, or rather Captain Carter's letter to Mr. Rossiter.

Q Don't you consider that a business relation?

A No sir, I should hardly consider it more than a personal matter.

Q Was Captain Carter associated with you in any way in that matter of which he wrote?

A Not at all, sir, so far as money was concerned.

Captain Carter: Did I write to you or speak to you at any time in behalf of another gentleman who was closely connected with some of the Vanderbilt enterprises, suggest-

658 ing that it might be possible that we could form a business association, or do you remember?

A Yes, there was some talk, but it never came to anything.

Q Do you know who I mean?

A Yes, I know what you mean without stating who that gentleman was. I would like to say this—

Captain Carter: You spoke to me as to having seen General Husted. Is that the gentleman referred to?

A Yes.

Colonel Gillespie: Who is he?

A I think he was an attorney, or directly connected with the Hudson River Road in some way or other. It was in relation to possible work if it came up.

Captain Carter: Did anything ever come out of it?

A Not a thing.

Colonel Gillespie: Was it a work in which Captain Carter was expected to be associated with you?

A Possibly.

Captain Carter: Was it contemplated that there should be anyone else besides ourselves in that enterprise, in case I became associated with the work?

A Well, now I don't recollect as to that, it is so long ago.

Colonel Gillespie: Was Captain Greene expected to be associated in it?

A No. No reference was ever made to Captain Greene with reference to this at all.

Q You have stated that the certificate of the Em-
659 pire Construction Company for stock was not in your hands? It never came into your hands?

A No, never.

Q Did you pay any money on it?

A No sir.

Q Was there any money put into this company? Were not certificates issued?

A I believe there were certificates issued.

Q Without consideration?

A I don't know, they were not delivered to me. My connection with the Company arose something like this: Captain Greene said to me one day, I will put some stock in your name for the purpose of carrying on the organization, and that is all I know about the Company.

Q Did he ever call upon you for any money?

A Oh no, never. I never had one penny's worth of relation with the Empire Construction Company.

Q Did you have any business associations with any enterprise in which Captain Carter was associated later?

A Never.

Q Or Captain Greene?

A Captain Greene and myself were partners in a piece of railroad work.

Q Are you partners now?

A No sir, never were except in carrying on this one piece of work.

660 Q Captain Carter: How many years ago was that?

A That was the summer of 1892; say the working season of 1892.

Q Have you had any relations with him since?

A Not any at all.

CAPTAIN WILLIAM M. BLACK and CAPTAIN DAVID DuB GAILLARD, were re-called and examined as follows:

Colonel Gillespie: Captain Black, you were requested yesterday to kindly prepare certain estimates for the use of the Board. Have you got the results of your work?

Captain Black: Yes. They furnished me certain reports and a drawing, a tracing. Those were taken as the basis or as a description of a mat called in the reports, mat number 3-old style.

(Captain Black read in evidence a detailed estimate prepared by him, which is marked file No. 99.)

Captain Black: (Reading the last few words of his estimate) "3,332 square yards or 33.8 cents per square yard."

Major Raymond: That is the number 3 design?

Captain Black: Number 3, old style, as it was called in Mr. Twiggs' report.

BOARD FILE 99.

Capt. Wm. M. Black's estimate of cost of mattress referred to Board Record p. 660.

Note.....1.

In Mr. Twigg's report of Aug. 5th, it is shown that the total height of 8 course mattresses varied from 7.9′ to 11′.

In this total height there were 18 layers of poles, of an average diameter of, say 3′, or 4.5′, of solid poles.

In making the following estimate the fascines were taken as 12″ in diameter and the number calculated for in each layer was assumed to equal the number of linear feet in the mattress dimen. (?) perpendicular to the fascines. The number thus assumed is probably greater than the number actually used in construction, and this would make the estimated cost too great.

Mat. No. 3-8 course mat.
(old style)
4 courses 83′x49′
4 " 70x49′.

Grillage poles—8′ intervals.
4 lines for 49′
12 " " 83′
10 " " 70′

Total number in mattresses.
4 courses 83x49.
5x83x8=3320 lin feet.
5x49x12=2940 " "
Four courses 49x70.
4x70x 8=2240 Lin. feet.
4x49x10=1960 " "

10460 " "
Add 1-6 for lap 1743

12203 Lin. feet.

Cost delivered $82.20
8,906:12203::60:x
x=$82.20.

Mat number 3—
Brush—
2747 cubic yards brush made 9,660 lin. feet tightly compacted fascines of average diameter of 1 foot.

Total cubic contents of fascines—
9,660x.7854=7586 cu. ft.
2747 cubic yards loose brush=74169 cu. ft.

Thus the volume in the compacted fascines have the following relation to the volume of loose brush used. $\frac{7586}{74169} = \frac{1}{10}$

Mat number 3—
Hall's rept. Aug. 17, 1897, shows:
Av. diam. brush bound.....11".96
before choking further
After choking further 6".56
Quantity of brush in fascines as made: quantity of brush in tight fascines : : 6.562 : 92 equals 0.53
Av. diam. of fascines as placed equals 1'.

Mat.

4 cs — 83' x 49' —
lin. ft. fascines equals 4 x 83 x 49 equals 16286
4 cs — 70 x 49
lin. ft. fascines equals 4 x 70 x 49 equals 13720
Total lin. ft 30,006
Quant. of brush if compacted in fascines equals 8533 cu yds.
2747 : 9660 : : x : 30006
x equals 8533
Amount in fascines as used if continuous equals 8533 cu yds. x .53 equals 4522 cu. yds.
Cost of bundling brush, labor. St. Augustine experiment 13.5 per bundle 15' long.
In mat 49' broad there would be 3 bundles per length—loss 4'
In mat 83 ft. long 5 bundles, loss 8'
In mat 70 ft. long — loss 6'
Loss in 83 Ft. lengths equals 2 x 8 x 49.....784
Loss in 70 lengths equals 2 x 6 ft. x 49 588
Loss in 49 ft. lengths equals 2 x 4 x 83 664
And 2 x 4 x 70.....560
2596
lin. ft.

Or 2596
30006 equals .086
Amount of brush in mat. as used equals 4522 x .92 equals 4160 cu. yds.
Cost of brush equals 4160 x .06 (assumed) $250.00

Total number of bundles in 83′ lengths
2 x 5 x 49 equals 490
In 70′ lengths
2 x 4.5 x 49 equals 441
In 49′ lengths
2 x 3 x 83 plus 2 x 3 x 70=918

Total number bundle= 1849
Total cost of assembling equals 1849 x $0.135=$249.62
Spun yard — 160 ft. to the lb. — at 11c a pound.
12′ to a lashing and 5 lashings to a bundle

$$1849 \text{ bundles} - \text{cost} \frac{1849 \times 5 \times 12}{160} \times 11\text{c equals } \$76.00$$

Wire asumed 1000 lbs. at 4.5 cents equals $45.00
Labor assembling—assumed for cost of assembling mat at St. Augustine $300
Towing, launching and sinking and contingencies..... $125

Poles	$82.20
Brush cost	250.
Brush assembling	249.62
Rope yarn	76.
Wire	45.
Labor assembling mat	300.
Towing launching and sinking and contingencies	125.
	$1,127.82

3,332 sq. yds. or 33.8 cents per sq. yd.

661 Captain Carter: The kind it is claimed that I built?

A It is claimed to be that. Now, Captain Gaillard has worked out entirely independently from me some figures on this same mattress and I would be glad to have you hear him before you go on, if you will.

Colonel Gillespie: You thoroughly understand what you mean when you say, in general terms, mattress number 2 and number 3 cost 60 cents?

A Yes sir.

Captain Gaillard here read in evidence his detailed estimate, which is marked file No. 100.)

BOARD FILE 100.

Captain David DuB. Gaillard's estimate of cost of mattresses, referred to Board Record p. 661.

Cost of mats as reputed to have been built at Fernandina, Fla., according to data furnished by Mr. Marion Twiggs, Ass't. Engr., Aug. 12, 1897, i. e., that the ratio of the weights of the old and new style mats per square yard was 2.27 and that this ratio represents the relative amounts of brush used in the two styles of fascines, other quantities being practically unchanged, and the further assumption that the cost of the two styles of fascines varies as the quantity of brush contained in each.

Labor and materials assumed at prices paid at St. Augustine, Fla.

Cost of fascine mat number 3, Aug. 1897.

	sq. yds.
4 courses 83′ x 49′=	1807.6
4 " 70 x 49′=	1524.4
	3332.

Assuming that fascines lie one ft. apart from centre to centre and average one ft. in diam.

29988 lin ft fascines at $1.40 per 100 ft.....	$420.
Grillage poles, unpeeled	60.
1250 lbs. spun yarn at 11 cts	138.
1000 lbs. wire at 4 cts	40.
Labor of assembling mattress	265.
Cost of towing, launching, sinking and contingencies	125.
Supervision	75.
3332 sq. yds=	$1123.

Cost per sq. yd=0.337
=34 cts.

Labor 15 cts. per hour.

Cost of same mat as before assuming that the fascines as said to have been put in the mat are to tightly bound fascines, as regards density of contents, as $(6.56)^2 : (11.96)^2$ or

allowing for diam. of fascines, the cost compared with those made at St. Augustine is as 41:107 or as 1:2.61.

Above data is from amount of compression stated by John M. Hall, Inspector, Aug. 17, 1897.

29988 lin. ft. fascines at $1.21 per 100	$363.
Grillage poles, unpeeled	60.
Spun yard as before	138.
Wire " "	40.
Labor assembling mattress, 15 cts per hr	265.
Towing, launching, sinking and contingencies	125.
Supervision	75.
3332 sq. yds.=	
	$1066.

Cost per sq. yd.=32 cts.
Oct. 13, 1897.

D. D. GAILLARD.

Colonel Gillespie: Taking all the possible variations of change, you don't think you have varied more than ten per cent from the actual cost?

A No sir, I don't think so. I think that cannot be very much out of the way.

Captain Carter: You figured out in one way that the cost would be proportionate to the displacement, or in other words, to the weight. Suppose you were building those fascines; in one case you built it, say or myrtle, and in an-
662 other case you built it of black jack, the weight being as 1 to 3, would that be a true guide?

A That would make a very great difference.

Q You stated another thing. You assumed those fascines uncompressed to be one foot in diameter and stated that when built into the mattress they would still occupy one foot in horizontal space, each one?

A I made that assumption..

Q Do you think an uncompressed bundle of fascines crowded into a mattress would occupy as much space?

A I did not assume it to be an uncompressed bundle. I used the loosely pressed fascine and I did not know exactly what space it would occupy and I took a foot as probably the fairest.

Q You said about the cost of making a fascine—how will the cost compare in making the same size fascine with two

different qualities of brush, one brush not carefully trimmed, similar to the brush, to the twigs used in making military fascines, and the other brush lying out there loose of the character used on the South Atlantic coast?

A The more regular and straight the brush is, the easier it is to choke it.

Q In other words, the labor is less on that than it would be on the other brush?

A Yes.

Q Do you know what the actual cost of making fascines is?

663 A For the same diameter?

Q Do you know what the actual cost of making fascines out of perfectly smooth poles is?

A No, I never made any except out of the brush that we find on the Florida coast.

Q It is a fact that it takes about five men an hour and a half at 15 cents an hour to make one of those fascines?

A I don't think so. I base that on the reports from West Point of the military engineer and it says that five men in an hour can make a fascine. My recollection from experiments at West Point is just about an hour. That is for the labor alone. Then reducing it as he says, makes it 75 cents for a fascine for the labor in the easier constructed fascine. I made about 100,000 lineal feet of the other, and the greatest number of them I actually saw made, as I was a young assistant.

Captain Gillette: Did I understand Captain Gaillard to say that the labor in making fascines out of trimmed poles would be greater than the labor of making a fascine out of a bundle of brush, or less?

A I said a fascine of straight brush. The more regular and straight the brush, the easier it is to lay it in the rack.

Q Captain Carter: May I ask Captain Black which he considered the most reliable guide in getting the cost of a fascine mattress; to do a certain amount of that work and take the actual money paid out for that work and then
664 take the number of cubic yards and find out from the total number of cubic yards, dividing the total amount of money by it, find the amount per cubic yard, or his estimate?

A Make it clearer.

Q Which is the most reliable guide, your estimate of cost,

or the actual cost based upon the actual amount paid out for such work?

A I would say neither. You are resting on too many assumptions. I have found that there is the greatest possible difference in fascines. I would have to know what the fascines were.

Captain Carter: I say the same fascines. Which would you consider the most reliable, an estimate of cost on a mattress made as you have made it, or what you found out to be the actual cost after you had made a certain number of them from the money you had paid for them?

Captain Black: I made out the estimate for them from what I found them to cost.

Q Suppose you go out and built it and put out a certain amount of money for it. Which is the most reliable?

Colonel Gillespie: Would you prefer your estimate of the actual cost to the actual cost of the work by somebody else?

A I would prefer my estimate unless I had the making of it. I would not take anybody else's sayso about the making.

Colonel Gillespie: Captain Black, I would like to ask you a question again about what the Board of 1895 really
665 meant to recommend for construction as a foundation for this improvement proposed for Cumberland Sound, what the Board designed to recommend in their report as a proper foundation for the improvement for Cumberland Sound?

A They simply meant a thin mattress of wood and on top of that the jetty was to be built. The wood did not figure in the jetty at all. Do I make myself clear there?

Major Raymond: Yes.

Colonel Gillespie: Then it was chiefly a stone jetty?

A It was entirely and the wood was simply to prevent its going down and prevent scour immediately alongside.

Q Then, a jetty built essentially of mattresses and weighted with a light order of stone, would not be in accordance with the project of the Board?

A No sir, it would not be in accordance with the project of the Board.

Captain Gillette: I would like to ask Captain Black which he considers best for the use on an ocean bar, like any of those southern bars, loose brush work or closely choked fascines?

A In waters in the South it has been my experience that to keep any brush over a year and a half it had to be so

close to the bottom that it would certainly sand up within six months. For that reason I would use no brush beyond the limit of that sanding up, and that limit, so far as I could find out, was within 18 inches of the bottom of the water, the ocean bottom.

666 Q That is not quite the question I asked. It has been asserted here that loose brush, loose bundles, was better for this work than tight bundles.

Captain Carter: I think that Captain Gillette is in error in stating that very loose bundles were used. I think the statement is this; that what was desired was bulk, not weight, but that it was necessary that the fascines should be choked; otherwise the compression in holding them down until they could sand up would be too great, so that I think his statement that loose brush is the best, is an error and not borne out by the testimony.

CAPTAIN FREDERIC V. ABBOT, was called to the stand at the request of Captain Carter and examined as follows:

Colonel Gillespie: Captain Abbot, how long were you stationed on the South Atlantic coast?

A About 13 years.

Q Have you been in charge during that time of the construction of any improvement which called for the application of what is known as mattresses?

A Yes sir.

Q Captain Carter, you can take him in hand.

Captain Carter: Are you familiar with the specifications that I put out for the works in my District?

667 A I have read them over carefully.

Q The last ones of 1896?

A Yes.

Q Those in 1892 also?

A I don't remember having read those carefully.

Q In my specifications for 1896 I asked for three designs of mattresses, the first type being the ordinary log mattress we used to use, the second being the type I believe you used at Charleston?

A I actually used none at Charleston. At Winyaw Bay, I called for three designs, the third being a layer of fascines.

Captain Carter: The designs are mentioned in the specifications. Will you kindly tell me whether or not that you consider that these mattresses cost approximately the same, or whether they vary materially in cost?

A I was uncertain, when I advertised for the Winyaw Bay work; hence, called for the price of each design. The bids as actually received for the three designs showed that the Alabama Dredging and Jetty Company bid the same price for all three designs, which were practically identical with Captain Carter's. That was 65 cents for all three. The Stewart Construction Company of Columbia, South Carolina, bid 60 cents for the first and third designs and 62 cents for the second. McArthur Bros., of Chicago, bid 90 cents for the first, 94 cents for the second and 92 cents for the third. Mr. George W. Eagan of Charleston bid 62, 68 and 67 cents.

Colonel Gillespie: What date?

A That was on March 12, I think, 1897. (Continuing). Mr. John L. Grim bid 95 cents for all three patterns. Mr. Friday bid 90 cents for the first two and 85 cents for the third design. Mr. Roderick G. Ross bid 57 cents for all three designs.

Q May I ask what was the amount of money involved in this contract?

A The contract was one of the continuing contracts and involved an expenditure of something like two millions of dollars, but the Ross prices were so low as not to absorb the whole amount by a considerable sum.

Q Can you give the amount of the bid?

A That I cannot answer without access to the records?

Q Was his price lower than your estimate, do you remember?

A I cannot answer that, it is a matter of some 9 months ago.

Colonel Gillespie: What was his price?

A Fifty seven cents.

Q Has he done any work under the contract?

A The contractor had not begun at the time when I left the District. The location is very unhealthy and I preferred to have him begin later, and as I was going to be relieved, I thought my successor should have the right to start the south jetty at the point he should select, as he would have
669 the carrying out of the work.

Captain Carter: Which do you consider easier to do, work at Winyaw Bay or Wappoo Cut—mattress work?

A It is so entirely different it is hard to say. At Winyaw Bay you have to contend with rough water, and the dam in Wappoo Cut was across such an exceedingly shallow creek that it was very difficult to get any material to the site of the dam.

Captain Carter: May, therefore, local conditions within a very restricted area vary materially the cost of construction of similar work?

A Absolutely.

Q May this vary within wide limits?

A Unquestionably.

Q So that the price of $1.10 per square yard for mattresses, which I believe was paid at Wappoo Cut, might be as reasonable as a price of 57 cents paid somewhere else for similar work?

Colonel Gillespie: Well, Captain, is it as easy to build at Cumberland Sound as it is at Winyaw Bay? Are the two Harbors any different in point of exposure?

A It is a question of where the brush is to come from. When I was at Cumberland Sound we were using log mattress and they were accessible within a distance of 6 or 7 miles, as I remember it. Where the brush would have to come from I dont know.

670 Q I meant really to say the exposure of the place?

A I should say Winyaw Bay is fully as hard as Fernandina. The bar is very shoal.

Q Is it as hard as the north jetty of Fernandina?

A Quite similar I think.

Q Do you know anything about the value of labor, the relative value of labor at the present time at the two places?

A No, labor is very cheap at Georgetown and I presume at Fernandina, but I do not know.

Q What is generally the character of the labor in all that section of the country?

A It is negro labor with generally white supervision.

Captain Carter: Are you familiar with the work which was done by me in Savannah Harbor between 1892 and 1895 under the project which called for 26 feet of water?

A I have been through it with you on the boat once and I have looked over the repairs, but that is about all.

Q Do you remember the details of construction of the work?

A No, just what I could see as I went down. The most of the work was concealed below water.

Q Do you think it probable that an intelligent contractor could submit a bid for work similar to that at Winyaw Bay or Cumberland Sound without having visited the locality in person, or having it visited in person by somebody connected with him?

671 A He would be bidding in the dark if he did not examine the place.

Q This is irrespective of the specifications or not?

A It would not be wise to bid under any specifications without seeing the exposure to the ocean.

Q Have you seen the mattresses constructed by me, or do you remember whether instead of sinking a mattress singly I built mattresses on top of one another and sank them in that way, several mattresses at a time?

A I never saw it. The attempt was made to do the same thing at Charleston once but it failed.

Q And in Savannah Harbor the bottom was very soft and I started in with a estimate of 350,000 square yards of brush mattresses. In executing that work, I found that, putting a mattress down, loading it with stone, then putting another mattress on top of that, loading it with stone, and so on, several courses of those mattresses disappeared and it became a question then of how to get that training wall up to the height required without it sinking down into the bottom. I then devised a method of sinking of the mattresses, the free floatation being very little, by putting them on top of one another, as many as I could, and only putting a load of stone on all those mattresses about equal to what would have been placed on a single mattress. By that method I got the height I wanted. The dam silted up and the work was successful, but it diminished the amount of stone required

672 and increased the amount of mattress work required. I went ahead with that sort of work—

Colonel Gillespie: Is that an essay or question?

(Side talk between the members of the Board in relation to the above question.

Captain Carter: I will withdraw it, then.

Major Adams: Captain Carter, you called the witness and you ought to bring out that point.

Major Raymond: I think it would be just as well to let Captain Carter bring it out in his own way, even if it takes all night.

Colonel Gillespie: Very well, let him go ahead.
Major Adams: I think he can bring it out by questions.
Major Raymond: I think very likely.
(Captain Carter preferred not to continue).
Colonel Gillespie: The specifications to which he refers say that the quantity of mattress work required for canvassing bids for Savannah Harbor would be 350,000 square yards. Do you think it right and proper for Captain Carter to increase this quantity to 1,360,000 square yards, as he actually did, the quantities of other required materials being correspondingly reduced?

673 A I think it should have been reported, a change as great as that.

Colonel Gillespie: At what time do you think that change should have been reported to the Chief of Engineers?

A When it developed that it is really going to amount to anything considerable.

Q He actually increased it, as he says here, by fourfold. Do you think it lies within the power of any District officer to make such an enormous change without the knowledge and the authority of the Chief of Engineers?

A I dont know as technical request for authority from the Chief of Engineers would be required. As the facts were to definitely reported, it becomes simply the use of more of one kind of material and less of another. The fact that the Chief of Engineers knew of the large change intended by you would carry with it the certainty that he would disapprove and stop the carrying out of the change unless it was accepted by him.

Q This mattress work has a definite price in the contract?

A Yes.

Q Would you increase it fourfold, it makes a difference in the eventual payment expected to be made to the contractor at the time the contract was actually entered into for this work?

A Yes sir, unquestionably, but his bid is supposed to be a balanced bid, and he is supposed to make the same per-

674 centage of profit on the different items of his bid. In awarding bids I have always tried to see that the prices in the accepted bids were made so as to make an equal profit on the different classes of material, and thus make no difference to the contractor or to the Government if more of one material and less of another were used. I should recommend the rejection of an unbalanced bid.

Q Would not the use of different quantities of material in this way practically change the plans of construction?

A Yes, and in entering into a contract a man might bind himself to do the impossible, so that in reporting to the Chief of Engineers that it was impossible, I should consider that I was justified in increasing or diminishing quantities, as it was done with the knowledge of my Chief.

Q But, would you consider it right and proper to go blindly on executing a plan and eating up enormous quantities of materials beyond those provided by the contract, without the knowledge of the Chief of Engineers?

A No sir.

Major Raymond. But, would you consider that you could do it without the authority of the Chief of Engineers if he knew it?

A I should not consider it necessary to secure a technical authority required, for instance, for employes.

Colonel Gillespie: We are talking about mattress work.

675 A What I meant by technical authority was to submit the question to the Chief of Engineers and receive his approval of your continuing with it. Well, I should consider that not receiving orders from the Chief of Engineers was equivalent to an approval.

Q And do you understand that a constructing officer being entrusted with the charge of a work of improvement where plans are definitely given him, and specific quantities of material are mentioned, that he can depart from that plan and adopt another plan, demanding the use of larger quantities of material without the approval of the Chief of Engineers?

A Not without reporting the facts fully and then if he gets no orders, I should think he had a right to carry out the design he wishes to carry out.

Q You were a member of that Board of Officers on Cumberland Sound in 1895?

A Yes.

Q What was your belief as to the concensus of opinion of that Board upon the nature of the jetty proposed to be built and the nature of the foundation upon which that jetty rested?

A I fully understood that the Board intended a stone jetty, built on a single foundation mattress, extending the full length of the work.

Q Was that matter discussed fully before the Board?

A I had no doubt of the meaning of our report, but
676 we had so much discussion I dont remember what we did not discuss. I think it was.

Q Now, I will say that coming back to the Chief of Engineers again, the specifications say in one of those contracts that the stone to be used for sinking a mattress shall have a specific gravity of 2.4. Captain Carter accepted, used and paid for stone having a specific gravity, only a little greater than 2 if any; do you think it right and proper for Captain Carter to have done so without the knowledge of the Chief of Engineers?

A It should have been reported, but I do not know that many officers measure the specific gravity of stone they buy by the cubic yard, so long as it is heavy enough to hold the work in place.

Q Would it be equitable to other possible bidders who had no means of knowing that such a concession would be made, for Captain Carter to specify stone of one specific gravity and then accept stone of another, of a less grade than was called for? My question is, do you think that calling for one grade of stone and accepting another, is an equitable thing for possible bidders?

A I believe that the specifications ought to be enforced. That is my belief. That is, when you state a specific gravity, it ought to be enforced; but if you dont, you can use your judgment.

Colonel Gillespie: The price actually paid by Captain
677 Carter for the type of mattress adopted by him was $1.10 per square yard. Are you familiar with the mattress that he proposed to use or did use?

A I have used similar specifications for Winyaw Bay and I got bids on those designs, but that is the only experience I have had actually with that class of mattress.

Q It is in evidence that Captain Carter proposed to use the third type?

A Well, that I do not know.

Q Suppose he did use the third type, or some modification of it. Do you think that $1.10 is a reasonable price for such a mattress at Cumberland Sound?

A I paid $1.25 per square yard for a log mattress at Charleston under a continuing contract. The total amount of the mattress aggregated only $50,000 in a contract aggregating about a million and a half dollars. The prices for stone were so low that I feared to re-advertise, as the aggre-

gate cost of the work might thereby be increased. I knew that $1.25 was altogether too high and so reported to the Chief of Engineers when I recommended the acceptance of the price. The log mattress had been put in at Charleston under one of the contracts for 49 cents a square yard, but this was much nearer shore and the mattresses were much smaller and more easily handled. As the work advances seaward the more mattresses are broken up and lost in set-
678 ting. As a result the fair price to pay for them increases.

I should say a $1.10 was high for log mattress is used in large quantity. My only data for brush mattress are derived from Winyaw Bay bids, which indicate about the same value of log and brush mattress, namely, 57 cents.

Captain Carter: Do you know anything about the use of Florida stone, I mean the relative value of Florida stone compared with other stone?

A I have never seen it used anywhere, but I have talked with those who have used it and it has the value, I am told, or characteristic, of being readily covered with a marine growth. I have never seen it used.

Q Suppose you were buying stone by the cubic yard, and you sent an average sample of that stone to have its specific gravity determined, adopted that in your specifications, knew that all bidders understood the kind of stone you wanted, would you have considered it necessary to have determined the specific gravity of the stone afterwards to find out whether or not it was in accordance with the specifications?

A Under such circumstances I have given my inspectors a sample to go by always of the granite we used there at Charleston.

Q You were asked, some time ago, if it was proper to increase the quantities without the knowledge of the Chief of Engineers. As a matter of fact the increase in quantities
679 was reported in writing to the Chief of Engineers and to the Division Engineer each month, and the Division Engineer and the Chief of Engineers were made further orally acquainted with this change. Knowing this, do you think then it would be necessary further to get any specific authority from the Chief of Engineers for such change?

A I should have made a special report myself of any considerable change. in relation to it. At Charleston the stone fell short about 25,000 tons on a 525,000 ton contract. I did not think it was necessary to report that.

Captain Gillette: If you put into your specifications that

the stone should have a specific gravity of 2.4—Florida rock has a specific gravity running from 2.4 down to 1.5—and you informed all the bidders that Florida rock would be accepted, would you think that they would be justified in assuming that any rock from Florida would be accepted, irrespective of its specific gravity?

A Not if the required specific gravity was printed in the specifications, no.

Q Then if you chose to force the contractor who got the contract to use Florida rock of a specific gravity of 2.4 after telling him Florida rock would be accepted, would you feel justified in doing so, would you not?

A Yes.

The Board adjourned until 10:30 A. M. Oct. 14.

680 October 14, 1897, the Board met pursuant to adjournment.

Present the same as before.

The examination of CAPTIAN FREDERIC V. ABBOT was continued.

The stenographer read the last few questions and answers given by Captain Abbot yesterday as reported on pages 678 and 679 preceding.

Captain Carter: Would you feel justified in forcing a contractor to use that when you had explained to him that other rock would be permitted and he understood and made his bid on such basis, on that rock?

A I should not have made any such statement to a prospective bidder, as I had defined in the specifications what I wanted.

Q Suppose you had made such statement, would you feel authorized then in compelling him to supply a higher grade of stone than was explained to him would be required and for which he made his bid?

A It is an unsupposable case. I should not have agreed verbally with a man for a different class of stone than for what I called in print.

Q Suppose you called for a certain, well understood
681 grade of stone, had its specific gravity determined, inserted that in your specifications, such determination having been discovered afterwards to be an error but it having

been thoroughly understood by both you and the bidder, what kind of stone would be required, would you feel justified in forcing a compliance with that error?

A I should say it would be a case for a supplementary agreement to the contract.

Q But, will you answer the question first before you make that qualification, if you dont mind?

A What is the question?

The stenographer repeated the question.

A I should say nothing could be done without a supplemental agreement.

Q Suppose your inspector were furnished with a sample of the stone desired, as you said you did in Charleston, and the stone furnished agreed with that sample, and the fact that the figure put in for specific gravity was not known by you to have been an error, would you consider that you had done wrong in allowing stone to go in, it having agreed with the quality desired by you and the quality bid for by the contractor?

A If the sample was understood by all bidders to be what was intended, the sample of stone itself should govern, instead of the printed specifications.

Q That is what I wanted to find out.

682 A If you had a sample that was showed to the bidders, that would be the guide; but, it would be well to have had the sample referred to in the specifications.

Colonel Gillespie: How would that affect bidders who did not have the privilege of seeing the samples and were guided solely by specific gravity?

A I think, Colonel, for a contract as large as this every bona fide bidder ought to be required to visit the locality and see what is wanted.

Q Captain Carter: They were required to submit a sample of stone and they all submitted samples.

Colonel Gillespie: But, as a fact, you know that a great many bidders do not attend to that, nor visit the locality, but trust to the specifications. Here you are providing for the delivery of a material whose specific gravity differs from the stone whose specific gravity is mentioned in the specifications.

A On the basis of an error in the determination of the specific gravity originally. At Winyaw Bay all seven bidders actually went over the ground and my usual experience with contractors has been that they come and go over the ground,

and I think these men are the men who ought to have the preference rather than those who bid blindly from a distance.

Colonel Gillespie: You would not compel a bidder to be present?

683 A I could not compel him. You could invite him to be present. He has the privilege of bidding from any point; but he should not be deceived by the specifications themselves.

Colonel Gillespie: The only point was, whether this was in conformity with the specifications?

A The question is, whether all bidders were shown the stone, of which a wrong description had been given.

Colonel Gillespie: I will ask Captain Carter if all the bidders saw this stone.

Captain Carter: All the bidders not only saw this stone, but furnished a sample corresponding with it.

Colonel Gillespie: Were all the samples of stone examined by you—by the chemist under your directions?

A None of those received were examined by the chemist. They were only compared in appearance.

Q Which was the stone which you did subject to a chemical test?

A It was a sample that was subjected some time ago. I sent it from Savannah.

Q I thought that was the standard and none of the stone ran below that standard.

Q Oh yes, it may have been that; that whole determination was an error.

Q Then your whole specifications were in error in that respect?

684 A It may have been that the 2.4 was a mistake by the chemist. I did not check it. I suppose him intelligent enough to determine the specific gravity of the stone and I assumed his determination to be correct. The fact is that the stone furnished corresponded with the sample whose specific gravity was determined. Stone falling below that was rejected or ordered rejected, and the question that I wanted to ask was whether the stone itself should govern or whether a determination of specific gravity, which was in error, should govern. Referring to my statement that all of the bidders not only saw this stone, but furnished a sample, I desire to state that may be an error, but that the bidders saw this stone and understood that stone equal to it would be accepted, is true. Whether all of the bidders submitted a

sample of such stone, I am not sure, but believe they did not.

(Addressing Captain Abbot.

You were asked, Captain Abbot, whether a bidder from a distance could have known that Florida stone was required. Do you think that any intelligent contractor would bid on a work like Cumberland Sound without having personal knowledge of the locality and the materials to be used?

Captain Abbot. I dont think the bid should be accepted if it were permissible under the form of specifications unless the locality had been personally inspected. The result is liable to be a bidder either too high or too low and subsequent
685 failure in the middle of the contract.

(At this point the stenographer, Mr. Stevens, was relieved and the future proceedings were reported by Mr. McCarthy and Mr. Dawson.

G. L. G.

TESTIMONY BEFORE BOARD OF OFFICERS.
VOLUME 3.

M. 3.

Stenographic Reports
—of—
Various Examinations by a Board of Officers of the Corps of Engineers
at
New York, N. Y.,
October 14, 18, 20, 25, 26, 27, 29—1897.

Reported by Stenographers
McCarthy,
Dawson, and
Stevens.
(Stamped)

Office Chief of Engineers
War Department
22530
80
Nov 13, 1897

Stamped
Office of The Secretary
War Department
2653
4
Oct 11, 1900

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686 Examination of CAPTAIN ABBOTT continued (Taken by Mr. McCarthy, Stenographer, Oct. 14, 1897)

By Captain Carter: Q Do you think it inequitable to call for one kind of stone and accept that same kind of stone?

A Certainly not.

Q Do you think it right and fair for Captain Carter to have adopted a type of mattress differing slightly from the rigid design, no diminished cost of construction resulting, with the knowledge of the Chief of Engineers?

A With the knowledge of the Chief of Engineers, no sir.

Q Do you think it right and proper to increase one quantity of material, the other quantity being diminished, said change being for the interest of the United States, without resulting gain to the contractor, with the knowledge of the Chief of Engineers?

A With the knowledge of the Chief of Engineers, yes sir, within limits. In case large quantities are concerned, a supplemental agreement in writing specifying the same price, or the changed price, should, for the safety of the officer's record, be made.

Q Suppose it were impossible to get a supplemental contract for a large quantity except at an increased price; would it be more desirable to make a supplementary contract at this increased price or to continue little by little under the old contract, the quantities put in being with a knowledge of the Chief of Engineers?

687 A For the safety of my record, I should want to have a supplemental agreement, even at an increased cost. If possibly a modification, which could be had for the same price, would be attempted, if the contractor would not agree for the same price on a construction exactly as desired.

By Col. Gillespie: Q Suppose the contractor should make an unreasonable demand for increased price, would you consider the question of advertising?

A That depends so much on the wording of the contract that I should doubt the possibility in some cases. The fact that I had drawn specifications which could not be carried out to the advantage of the United States would not justify the United States in annulling a man's contract when he was willing to carry out the specifications as I had drawn them.

Q My statement was an unreasonable increase?

A Yes.

By Capt. Carter: Q You were asked if you had experience in building brush mattresses, I believe?

A Yes sir, the question was asked.

Q Did you give your knowledge of the cost of these from actual construction of them, or from the prices received from bidders—You gave a cost?

A They were the figures actually bid by the different bidders at the formal opening.

Q You have been in my district at various times, have you not?

A I have.

Q Will you state what you know or what your im-
688 pressions were concerning the manner in which the work under my charge was carried out?

A I have always believed the work was well done.

Q Is there anything else concerning the conduct of my office or the works under my charge, either from personal knowledge or from impressions formed, which you desire to state without a specific question?

A No; there was nothing to attract attention one way or the other when I was in your office or at your house, except that you appeared much interested in your work. I have had no personal relations with any of your clerks or other employes except two who visited the ten-inch battery and mortar battery on Sullivan's Island, at your request.

By Maj. Raymond: Q You gave some testimony yesterday, Captain, with reference to the cost of mattresses at Winyah Bay. They were the prices bid upon the work?

A Yes sir.

Q Do you remember the prices bid for the stone?

A $1.57 a ton of 2,000 pounds, irrespective of size. Three sizes of stone were called for and the same price was bid for all three.

Q By all the bidders?

A By the lowest bidder; I haven't got the stone prices here, but Ross's figures were $1.57 a ton of 2000 pounds on all grades.

689 Q What kind of stone do the specifications call for?

A Granite.

Q The specific gravity was not mentioned?

A No sir.

Q Durable and hard granite?

A Yes sir. In the ballast for mattresses my impression is that I permitted the use of any heavy stone not injured in

salt water, and that I put in for the large stone that where the stone is to be subjected to the action of heavy waves, nothing but hard and heavy granite would be accepted. The specifications are not in record, but that is my recollection of how I drew them.

By Col. Gillespie:

Q The stone that has been described by Capt. Carter as acceptable stone and which is received under the bid of June 6, 1896, at $3.50 a yard?

A A cubic yard.

Q Do you consider that bid a reasonable or an unreasonable bid?

A I don't know about the transportation cost in Florida. In South Carolina we got a freight rate of half a cent a ton a mile and at that price the freight cost was about one-half the total cost to the contractor, of the stone finally in the work, judging from my own experience. The cost at Charleston of granite in the jetty being by hired labor, $1.70 a ton of 2000 lbs., and the freight being between seventy and eighty cents, depending on the rail route. I can therefore tell but little of the cost of Florida stone unless I have the rail-
690 road freight rates. It is about half the cost of the stone, but it looks as though the price was very high.

Q There is a statement in evidence that railroad rates varied from $1.00 to $1.50 a ton,—supposing it was $1.50?

A Was there any certainty that the bidder could be assured of a permanent rate during his contract,—the bidder would have to discount in his bid the highest railroad freight he might be squeezed to pay.

Q It is to be supposed that when a man makes a contract with us, he has already made all of the arrangements for the delivery of his material?

A Then he must have counted on $1.50, if it was raised to $1.50.

By Capt. Gillette:

Q The gentleman who testified said $1.25 and then raised to $1.50?

A Oh, I thought you said the price had fluctuated. I see that in my answer to Col. Gillespie's question about cost of stone I did not finish what I intended to say. The freight is only one element. I understand the Florida stone is picked up from the ground by hand, loaded into carts and hauled to the railroad. What the cost is I do not know; although I know a gentleman near Ocala who has done some of this

work for contractors, either at Tampa or Fernandina, I do not know which. The stone is loosely distributed over a
691 considerable area of ground as I have seen it. The cost of granite quarrying I know closely; it is between fifty and sixty cents a ton loaded on cars at the United States quarry at Edgefield, South Carolina, when the work is done by hired labor. The freight to Charleston varied between seventy and eighty cents a ton of 2000 pounds. Unloading from the cars to lighters costs approximately fifty cents. Unloading from the lighters onto the jetties, including towage and watching, varies from thirty cents a ton to eighty cents a ton, depending on weather and not including extraordinary repairs to plant or any depreciation. The actual cost of a year's work in the Charleston jetties by hired labor was $1.70 a ton of 2000 lbs.

By Col. Gillespie:

Q Would $3.50 a ton delivered in the works at Cumberland Sound be regarded by you as an extravagant price to pay for that same granite delivered by way of Charleston?

A The distance from Charleston to Fernandino is, I believe, about 240 miles. This, if on a single railroad, would call for about $1.20 freight rate. Switching and wharfage charges in connection with the two roads covering these 240 miles would probably cost thirty cents a ton, making the additional freight charge per ton at least $1.50. The cost for
692 putting into the work at Fernandina should be approximately equal to that at Charleston, which is $1.70 a ton by hired labor. The aggregate of the cost at Fernandino, carrying the stone by rail from Charleston, would therefore be about $3.20; but the whole question of freight rates is so uncertain that this must be regarded as a simple guess.

CAPT. GILLETTE further testifies:

By Capt. Carter:

Q You stated yesterday that it was common rumor that I had changed the harbor lines for the purpose of favoring the Atlantic Contracting Company and gave the names of Mr. Cooper and Mr. Twiggs as two of the men, also stating that there was one of the Aldermen of the City of Savannah —Have you thought of that name yet?

A No sir.

Q I have here a list of the Aldermen—Was it S. P. Hamilton?

A I don't know which it was. I didn't say it was the present alderman.

Q Could you give me some definite statement as to these rumors floating around, so that I could pin it down and get the authority for these rumors?

693 A This gentleman was in my office on other business and said that he had been an alderman or member of the council or something of that kind,—I am not sure which, familiar with Savannah City government, and went away. It was one of two men; I had a dozen men come into my office, sent for from a list, but which was which I can't remember.

Q Can you give me those two names?

A I don't know the names,—there were two gentlemen.

Q In as serious a thing as this, a member of the City Council, you didn't take interest enough in it to remember his name?

A I heard it a dozen different times.

Q From whom?

A Mr. Cooper, Mr. Twiggs and some other gentleman.

Q Who is this other gentleman?

A He said he was at one time a member of the City Council. He was one of a dozen that came to my office. I didn't know the names of more than three or four of them, and I don't remember his name.

Q You stated before the Board, that people occupying public positions had come to you?

A I can by a little investigation definitely tell this gentleman's name. I don't care to do it unless the Board requires it, as I will be responsible for the assertion that you made these changes in the harbor lines to get that stone. Rumors coming in—not the citizens of Savannah—

694 Q That you are not responsible for—You make this statement as coming from the citizens of Savannah; I would like to know whether your statement is true?

A I have given you two names of citizens of Savannah.

Q I would like to have, if possible,—it seems to me a serious charge for Capt. Gillette to make—the name of this man,—he says he can give it,—in other words, I would like to have every opportunity to find out how these rumors, which he says are current and which have never come to my ears, have come to his, and what degree of credence is to be at-

tached to the statements which Capt. Gillette says were made to him?

A If the Board desires, I can make a list of gentlemen in Savannah that have talked about this, but it seems to me that it drags in outside people who are not concerned and who do not care to have their names mentioned. I am willing to be responsible for the assertion that the motive in fixing the harbor lines was not good. Let it go at that. If the Board desires, I can make a list of them. I can find that gentleman's name; I am quite positive I can do so.

Q Capt. Gillette stated that people occupying public positions had come to him, stating that my administration was wrong, and that he had agreed with them. I went to him in Savannah—correct me if I make a mistake—and he stated that he did not mean to state that, but that a prominent citizen had come to him—I asked him the name of that citi-
695 zen, and then he said that he did not think I had a right to ask that name, or words to that effect. I stated to him that, inasmuch as he had taken the matter to the Chief of Engineers, I thought I was entitled to it. He said that he had told the Chief of Engineers that this man had said that he had not reported this matter because he had understood that the Chief of Engineers was in difficulty—

Capt. Gillette: The words he used were, that things were wrong in Washington—

Capt. Carter: I then demanded the name of this man. Capt. Gillette said he would give it if the man consented or the Board instructed him. I wired the senior officer of the Board to instruct him to give this. He said he had received this permission from the senior officer of the Board, but had changed his mind about giving this.

Capt. Gillette: I received permission from the Board; I said nothing about changing my mind. I said that I had received permission from the Board, but no instructions.

Q Didn't you say "I have changed my mind and will not drag this man in?"

A That I would not drag the man in unless the Board had ordered it.

Q I lived in Savannah a long time and I know most
696 of the people in Savannah, and I think it is only fair for a man making this statement that Capt. Gillette makes, that he should not attempt to shield himself behind the Chief of Engineers or the Board, but should be manly enough to give me the name of the man who he says was a prominent

citizen, intimating to me that the man voiced the sentiments of the people of Savannah and reflecting upon me in this serious way.

Capt. Gillette: I did not state that he voiced the sentiments of the people of Savannah.

Capt. Carter: You gave me the impression that the man was an Alderman and a prominent man.

Capt. Gillette: He was a man of great prominence. I asked him the question, if the people of Savannah thought that way, and he says, "There is an under current of such belief, with few exceptions." Another gentleman of equal prominence talked materially the same.

Capt. Carter: I submit, gentlemen, that this is a cowardly, unfair attack, to bring up these statements when I have no means of ascertaining whether these men are such citizens of Savannah as Capt. Gillette states. I think the only way that I can have any fairness or justice in this matter,—I submit, that Capt. Gillette should be compelled to give me the authorities for the statements he is making.

697 Capt. Gillette: I trust that Capt. Carter will confine his vituperations and calling of vile adjectives to outside the Board room, where the matter can be attended to promptly without discourtesy to the Board.

Capt. Carter: If I have said anything discourteous to the Board, I apologize.

Capt. Gillette: I take no discourtesy to me. The matter Capt. Carter spoke of was brought up by himself; he asked me that question before the Board; I did not bring it up. I have made no charges against him as to what people in Savannah were talking. He brought it up. I don't care to bring the people of Savannah into this unless there is good reason for it; while I believe both gentlemen who talked this to me would be willing to have their names mentioned, I should decline to mention them without good reason for it. I submit that it has nothing to do with the case except as Capt. Carter has dragged it into the case. If it influenced the Chief of Engineers in his action, it is a matter not for this Board.

Capt. Carter: My object, gentlemen, is this: I think I know rather intimately the people who are of Savannah, and I do not believe it possible that any of the sentiments voiced by Capt. Gillette should have been expressed by any one

698 man who forms an integral part of what is Savannah, in the sense of the best men, the representative men of that place.

Col. Gillespie: How did this matter first come up?

Capt. Gillette: Capt. Carter brought the matter into the case by asking me if I had said such things to prominent citizens in Savannah; I did not bring it up. I answered his question. It has nothing to do with the case I have presented to the Board at all. If the Board desires, I can go into it and study the past conversations up and give the Board a pretty good list of prominent people and what they have said, but it seems to me it has nothing to do with the case.

Col. Gillespie: The Board has examined the question propounded to it, and decided in the case of the name of the person or persons of prominence in Savannah who are said to have made certain allegations derogatory to Capt. Carter, that as that was brought up solely by the question that was put by Capt. Carter and answered directly by Captain Gillette, it therefore does not deem it necessary to require that the name should be divulged; but, in the case of the harbor line matter, as the charge has been made directly by Capt. Gillette, the Board deems it necessary that the name should be supplied.

Capt. Gillette: All the names of the people who have talked with me on the subject?

699 Q The name that you speak of?

A I can give Capt. Carter information by which I think he can find it. It was one of the jurors in the Brown Atlantic Contracting Company case brought up yesterday, who at the time of the contract was an Alderman. My impression is, that his name is Logan, but I am not sure. I sent for these jurors by a list. One of them told me that he was there at that time and said it was the worst bluff he had ever seen. Now, it is barely possible that I may be mistaken. There was another gentleman who looked like him who I talked to that day, and it may have been the other one, but my impression is that his name was Logan.

Capt. Carter: Is that an answer to the instructions of the Board?

Capt. Gillette: That is the best answer I can give.

By Col. Gillespie: Q The Board desires that you should make every honest effort to give the name of the man.

A Yes sir; I will talk with the man and be sure. I think his name was Logan.

By Capt. Gillette: (To Capt. Carter) Q You said that the specific gravity of 2.4 was probably an error. Do you

mean that Mr. Rolensky did not test correctly the piece you sent him?

A I did not mean to convey that impression. I said he may not have tested it correctly, but I presume that the
700 piece I sent him was denser than the average of the Florida rock and that the error was mine. I would qualify that: I presume, in view of weights given by Capt. Gillette, assuming that that rock is an average of what was received, to the best of my belief, being familiar with the rock that was received, the weights given by him did not represent fairly the average of the rock used at Fernandino, and while I do not know what the specific gravity was, I assumed it to have been 2.4 and which corresponds to that piece of stone; the general average of stone put into the work did correspond in appearance, in weight, so far as could be told by the rough way of looking at it on the barge.

Q You stated some time ago that stone falling below your standard, whatever it may have been, was ordered rejected. Were these orders written orders?

A I don't remember at this date. I think my printed book of instructions contained that,—a provision covering that, but at this date I don't remember.

Q You stated that contractors, all or some of them, furnished samples of stone that they proposed to submit; do you know what was done with those samples?

A Some of them were carried off and some were left in the Engineer's office at Savannah.

701 Q Did you label the sample of the successful bidder and preserve it for future reference?

A I won't be sure about that; I don't remember.

Q Do you remember of any rejections made under this written or other instruction as to rejecting rock not up to Standard—Were such rejections made?

A Yes sir; quite a number of rejections were made.

Q Was it a small percentage or a large percentage?

A Well, it depended; in the case of granite—

Q I am speaking of Florida rock only?

A I think there was quite a large percentage of rejections. By that, I don't mean necessarily that the percentage rejected after it got on the barge was large, but the percentage first coming up in the cars. I frequently inspected the rock at the request of the men delivering the stone, inspected the rock on the cars. and then told him what would be accepted and what would not, and the contractor then loaded the material

that would be accepted and was given permission to dispose of the other material as he saw fit.

Q Then, a part of the system of inspecting stone was for you personally to go at irregular intervals and inspect stone on the cars?

A And on the barges, both. I used to go all over my work at unexpected times, so as to keep thoroughly in touch with it.

702 Q Then, a portion of the stone that was on the cars would not be loaded on the barges?

A Oh yes, quite a large percentage.

Q In accordance with your inspection. I understood you to say that you would go over the cars, inspect the stone and reject a percentage of it, which would not go on the barges?

A Well, they were permitted to put on the barges if they saw fit, but were instructed if they did it would not be paid for.

Q Did it go with the good stone?

A Very seldom; sometimes it did. In these cases it was not put out, that is, the Assistant Engineer rejected it when it fell below the specifications.

Q Then, he rejected it after your inspection—after you inspected it on the cars—

A It was not all loaded on the barges. It would be a very foolish thing for a contractor to tow down stone that would not be accepted, if it could be disposed of in the vicinity.

Q You would reject a certain part of a certain car?

A I would state to the contractor or the man there, what stone was below the specifications.

Q You would point out individual stones?

A In a number of instances, but the men down there 703 are of sufficient intelligence, after having these things explained to them, not to make any mistakes afterwords.

Q I am trying to trace the rejected stone after you rejected in on the cars, as you have just recited?

A Well, I think it would be a very simple matter to trace it in Savannah. I didn't keep track of the rejected stone; the contractor can do with it as he pleases. I only kept track of the accepted stone.

Q When you rejected stone on the cars, what methed of government supervision was there to see that the particular

stones you had rejected were not subsequently measured and put into the work?

A Reliance upon my Assistant Engineers; the same standard to go by as I had. If I did not see the stone on the barge, I would not be absolutely positive, except upon relying upon his honesty, that some of that stone might not have gone in. You have got to rely upon somebody in this world.

By Col. Gillespie: Q I infer that you inspected the stone?

A Yes sir; both on the barges and on the cars, and the mattresses also.

Capt. Gillette: Q Did you not have present at the time of the delivery of the stone some one person whose duty it was to inspect and accept every delivery of stone?

A Certainly; not some one person, but it would be either one inspector or another.

704 Q Some person on hand always to pass judgment—

A Certainly; no stone went into the work that was not reported to me as acceptable by—

Q Then, the statement that you accepted the stone was supplementary to the other?

A Yes sir. This was a check on my inspection; and then it was also done once in the case of this other man Brown, at his request, he claiming that the Atlantic Contracting Company were rejecting more stone than they had, so at his request I went down with him, went over one or more cars of stone to show him, and weighed the stone. It was on a Sunday, I think it was. So that my knowledge of the stone that went into the work was very intimate.

Q What was done with the particular stone which you rejected, the particular individual stones or cubic yards of stone, which you rejected on the cars?

A This Sunday morning?

Q Any time?

A I do not know what was done with it. It was piled off to one side. Whether it was used for ballast or roadway, I do not know.

Q Did you stay there while it was piled off to one side?

A I had it thrown off and put on the platform of the scales and weighed.

Q All the stone that you were going to reject?

A No, not all of the stone; it was put in this way—

705 if you knew a little more about Florida stone, you could understand this thing. The stone which was smaller,—

there was a great deal of it; there was no necessity of putting it on the scales at all. You could tell in a minute that it would not come up to the specifications. Others would come reasonably near. If they were put on the scales and found short, they were put to one side. Then Mr. Brown would say, "Captain, I think that stone should go in." Then I said, "Suppose we weigh it." Instead of weighing twenty-five pounds or so, it would only weigh half that. It was not necessary to weigh every piece.

Q Then, you stayed there during the unloading of a car?

A I don't remember whether the car was entirely unloaded or whether only a portion of it, in order to get the approximate quantity, or whether there were several cars; I don't remember at this moment; it has been some years ago.

Q Was the object of your inspection to determine the character of stone to be rejected or to make rejections for that particular shipment—your inspection of the cars?

A It was made at the request—one inspection,—I made a number of inspections—

Q The general question—What were these inspections for?

A To ascertain the kind of rock that was coming.

Q You stayed there during the unloading of a part 706 of a car?

A Oh, I have been there during the unloading of a number of cars.

Q And you would determine which was good stone and which was bad stone?

A Not necessarily; the men had intelligence enough to do that themselves, ordinarily.

Q Where was the stone measured that was received?

A It was measured usually at the site of the work.

Q Then, in general, the stone received on the cars was not sorted under governmental inspection until it got to the works, was it?

A In general, it was not.

Q Did you have any one else besides yourself at the cars to see to it, sorting—any regular inspector stationed there for that purpose?

A I don't remember.

Adjourned to Monday, October 18, 1897, at 11:00 o'clock A. M.

707 New York, October 18th, 1897.

Pursuant to adjournment parties met.

Present:

Colonel Gillespie,
Major Raymond,
Major Adams,
Captain Gillette,
Captain Carter.

The Court was called to order, when the following proceedings were had

Captain Carter: Before proceeding with my defense it is proper that I should make this explanation. It may be that the members of the Board feel almost as restive as I do at the apparent delay in bringing this investigation to a close. If this be so, I would remind them that in addition to the difficulties of a personal nature under which I have been laboring incident to an examination covering a long series of years where the witnesses are scattered all over the Country I have been embarrassed by the unprecedented methods of my prosecutor, Captain Gillette, who grinds out his charges or insinuations day by day, so that I have no assurance when his inquisition has reached the limit. In the main charges I could have been ready long ago, but the cloud of more insinuations has caused more delay. To avoid this diffi-

708 culty and to save time I took the precaution before leaving Savannah on my last visit to make special inquiry of him if all his charges were in and he solemnly assured me that there was nothing else. To my surprise, however, when the Board reconvened in New York on last Tuesday, I was confronted with additional insinuations of improper conduct substantially as follows: 1. That in my testimony in a certain cause entitled Brown vs. The Atlantic Contracting Company, I had given false evidence to favor the contractor. 2. That I had established a Harbor Line at Savannah for the purpose of compelling the City to sell rock to the contractor at cheap prices. 3. That I recommended the removal of stone from certain works at Savannah Harbor for the purpose of enabling the contractors to obtain said stone.

Captain Gillette: Can I make a statement right here that should go on record in connection with that?

Major Raymond: I think you had better wait until later. We don't know what Capt. Carter has further to say.

Colonel Gillespie: I think we had better let Capt. Carter go right straight through.

Captain Carter: There is a statement which I might make right here in reference to the Cumberland Sound. It was stated by Colonel Haines, Captain Black and Captain Abbott that they understood that only one course of mattress was to be used at the sound and only one kind and no other.
709 I state that my understanding was it was to be as many courses of mattresses as the Sound would follow. As a matter of fact, I have figured up what the number of courses would have been. The actual length proposed by the Board of Officers was 6500 feet; that, with the 100 feet width, would give 72,222 square yards if one course only was used. The Board's estimate calls for 425,000 square yards, thus showing that more than one course must have been contemplated. I know that I intended it and I thought that the members of the Board understood it. More than that in June 1895 the Division Engineer inspected the work going on and these mattresses were being constructed then, one on top of the other.

Major Raymond: Who was he?

Captain Carter: Colonel Hains. And I remember meeting him a few months later, and while I do not remember at this date whether I explained to Colonel Hains and the other members of the Board the exact kind of mattresses I intended to use, I certainly supposed he understood it and I do not believe that any member of the Board would suppose that I would have abandoned the kind I had been using and which was satisfactory to adopt a type which was used at another place which did not appear to me to be so satisfactory. Further than that, I began as I remember with the six courses of mattresses as contemplated. That I may say was a theoretical contemplation depending of course, on how high the sand
710 would fill. I did not contemplate as many as sixteen courses of mattresses. That came about in this way. After the sand had filled up to the top of the eight courses of mattresses a new channel got ready to break through between the jetties and was almost through, and to save the discredit attaching to the fact that the old Channel was crossing the top of the south jetty, I went and raised this north jetty still further and the course was choked down there with brush mattresses. I don't believe I was at Fernandina after I started in on that because I did not start in on that until the latter part of June or the first of July. Of course if the sand did not fill, it certainly was not my intention to continue that work, and further than that, my action was dependent upon the report given by the Assistant Engineer,

and no unfavorable report was received from him until I left Savannah—in fact, no report was received at all by me unfavorable. I thought it best, and besides this as showing I could not have been mistaken as to the meaning of the language in the report of the Board of Commissioners in December, 1895, the language shows that it did not contemplate a single course of mattresses and could not have contemplated a single course. Now, I may say that there was a great deal of discretion given as to the details, which I do not at this date remember, but I know that it was a clear intimation in my mind, and I supposed it was equally clear in the
711 minds of every member of the Board. One other statement which I might make right here before I call in Mr. Brown. It will be admitted, I believe that the actual expense as to questions of cost of mattress work is safer than theoretical reasoning. In 1891 I asked for bids for two kinds of mattresses, one a log mattress and the other a brush mattress requesting at that time separate bids for each class of mat. In reply to that advertisement I received the following bids: Log mats $1.20 per square yard. Brush mats $1.16 per square yards. That was from the same bidder.

The second bid was $.99 per square yard for log mats and $.97 for brush mats.

The third bid was $1.22 for log mats and $1.22 for brush mats.

It will be seen that the prices bid are almost identical, the mattress which Captains Black and Guillard testify to be much cheaper being bid at a very slightly increased price in two cases. In Winyaw Bay the statement of Captain Abbot was that he received the same prices as I remember for the log mat and brush mat, but his records will show, In 1892 and afterwards, therefore, only one price for the three designs was asked for, experience having shown that bidders do not consider the prices of the designs to vary. This was done at Cumberland Sound in 1892, 1894 and 1896, and in Savannah in 1892 and 1896. There is therefore not the
712 slightest basis for the assumption that a bidder could not have bid intelligently on my specifications or that bids would have been received for a higher price than would have been bid had prices for each design been asked for separately. Moreover had bidders not known this and had they felt any uncertainty about it or felt that it was unfair in any way surely five lettings with keen competition would have developed this. As matter of fact nothing of that kind ever

came to my knowledge until it was brought up by Captain Gillette. However that there should be no possibility of misunderstanding in the specifications of 1896, it is distinctly stated that the work of construction would be brush mattresses, thus eliminating the first design. I think that covers the question of the price for the three. Now, about this statement of Captain Gillette's as to the Brown case. I have received a copy of my testimony in the Brown case, but I forgot to bring it down this morning.

Colonel Gillespie: Is this your explanation to the Board?

Captain Carter: My explanation of what?

Colonel Gillespie: Of the whole case.

Captain Carter: No sir, it is not all. I only want to get it out in a clear shape as to the explanation of the minor points.

Colonel Gillespie: Are you going to put in this oral statement and then supplement it with a written statement?

713 Captain Carter: This only covers a part of what I am going to say. I think, perhaps, I can facilitate matters by bringing up the witnesses I desire to produce now.

Captain Gillette: With reference to Captain Carter's statement that he came to my office and asked me if there was anything more, when he asked that question I understood—and certainly it could not possibly have referred to anything else—that he referred to the duplicate papers I was preparing to send to him which had been brought in by the previous testimony. As to the Brown case, I am morally positive that I knew nothing of this thing until after he left Savannah, and that my statement is strictly correct. It may be though that Mr. Cooper had told me there was something wrong in the case before he went away, but even if he had and had I known of it at that time I would have no business to have stated anything to Captain Carter before I communicated with the Board, so that if I misstated in that respect, he has suffered no wrong, as any new case that comes to my knowledge I should bring to the Board, and had I known of the case and known he was asking me about it I should have declined to have answered.

Captain Carter: I should not have objected to his declining anything like that, but when I asked him if there was anything else and he replied that there was not, I

714 thought it my duty to state it here so that the Board might know why I had been delayed in Savannah.

Captain Gillette: When Captain Carter came into my of-

fice no less than two or three times while I was trying to get the papers ready for him, he asked if there was anything more than what I had given him. I naturally felt that he referred to the same thing that I did, and had I known anything else I would not have told him. Can I ask him a question with reference to the use of the sixteen courses of mattresses?

Colonel Gillespie: You may.

Captain Gillette: Marion Twiggs was the Assistant Engineer. Did you explain to him that the top eight courses were to be used to get quick results and that he was to report directly in case they did not sand up?

Captain Carter: I don't know whether I told him it was to be used to get quick results. I do not take any assistant engineers' opinion as a rule and ask them what I should do for engineering results. I said to him as I have stated all along that he should carry on the work, and in case it was not working properly to let me know.

Captain Gillette: Did you put that in writing?

Captain Carter: I did not; at least I don't think I did.

Captain Gillette: Will you explain just how you expected to get quick results on this Channel parallel with the
715 north jetty without using the second row of eight mattresses or eight courses?

Captain Carter: This was simply an engineering problem, but to explain it to a man of your intelligence would be quite a difficult thing.

Captain Gillette: Just give me a brief statement of it.

Captain Carter: I was trying to raise that north jetty quickly.

Captain Gillette: What part of that jetty; you didn't raise it all?

Captain Carter: The outer end of the north jetty.

Captain Gillette. The extreme outer end?

Captain Carter: No, to illustrate the profiles show something like this.

(Here Captain Carter makes a drawing on a piece of paper and explain it to the Commissioners.)

Captain Gillette: In about what depth of water were these mattresses to be used to accomplish this result?

Captain Carter: I don't remember now what depth of water but the profiles will show.

Captain Gillette: About what depth?

Captain Carter: I don't remember what depth it was.

Captain Gillette: In about what depth would it be effective to get quick results?

716 Captain Carter: My impression is that where I started in on that second course it was about twelve feet below low water, although I can't tell. It is a great deal better to go to the profile for that.

Captain Gillette: The records of the office show you that the water was about twenty-five or thirty feet doesn't it?

Captain Carter: That I began in 25 or 30 feet of water.

Captain Gillette: There were enough of these mattresses ordered (were there not) to run away out in 20 or 30 feet of water?

Captain Carter: That is true.

Captain Gillette: Did you expect to accomplish quick results away out there with them?

Captain Carter: The quick results was to be accomplished by them before that.

Captain Gillette: Granted that that was justified; Does that justify you in using so many brush mattresses away out in deep water?

Captain Carter: You don't understand me. The object of that brush out there was to keep the sand from drifting into this Channel which would not have held its own without the increased weight out there, and to get this quick result would have necessitated the arising of the inner end. I may state what I did not suppose was necessary to explain

717 before, that a course of mattresses ordered for a certain length is subject always to revision, and upon the slightest indication, upon report to me of this work having been unsuccessful the order for the mattresses would have been immediately countermanded. I order what I think is necessary, but that order is not absolute by any means.

Captain Gillette: How many feet of water were you trying to get?

Captain Carter: If you will read the project you will find.

Captain Gillette: I would like to have it on record.

Captain Carter: The project calls for 26 feet mean high water.

Captain Gillette: At Cumberland Sound?

Captain Carter: At Cumberland Sound.

Captain Gillette: What range in tide?

Captain Carter: About six feet.

Captain Gillette: 19 feet is what I read the project at low water.

Captain Carter: Did I not say 26 feet at mean high water? I may be mistaken, it may be 25 feet at mean high water.

Captain Gillette: Did you expect to find out whether the mattresses in 25 or 30 feet of water would be useful or not before you put them in? You gave orders for the contract-
718 ors to sink this second tier clear to the end of the jetty out I think in 30 feet of water, I wont be positive, but in very deep water. Now, you say you expected to modify that in case the results were not as you contemplated.

Captain Carter: Certainly.

Captain Gillette: And the contractor was putting in a mattress or two every day and he would have had them in in 28 days; there were 28 mattresses ordered. Did you expect to accomplish these quick results before you got this outer mattress in?

Captain Carter: No, but my intimate knowledge of the bar is such that I knew about what would be required, and I knew further than that that if these mattresses sanded very quickly there, it would be a great deal better to do it in this way than in any other way, and I could stop the sand drifting in under the influence of the northeast gales, and I hoped that it would be as satisfactory as the former had been reported to me as satisfactory. Certainly no engineer continues a method of construction after he finds it is unsatisfactory.

Captain Gillette: But you could not possibly have found out whether it was unsatisfactory before they were put in?

Captain Carter: There is where I think you are in error because my assistant engineer reports to me immediately as soon as a mattress begins to fill. How high that sand will fill of course you can't tell until some time afterwards.

719 Captain Gillette: Your explanation now is different from what it was a few moments ago, your former explanation was that you wanted to use mattresses because you got quick results.

Captain Carter: That is true.

Captain Gillette: On which of these bases do you justify the mattresses out in the very deep water where there was already deeper water than you hoped to get by the project, was it quick results or because they would be sanded up?

Captain Carter: You can't get one without the other. It

is very difficult to explain to a man of your engineering ability these engineering problems.

Captain Gillette: I don't care for enlightenment as to my engineering ability. I want to find out what your explanation is. You explain this in a way which I think is no explanation.

Captain Carter: It is difficult to explain these things to certain people. This Channel was working in here (illustrating). Here is the north jetty and here the south jetty. The present Channel runs across the top of the south jetty and then proceeds out to sea. As this north jetty was raised this jetty pushed rapidly seaward. The idea was that if I could raise this portion here where the water was escaping over the jetty, I would keep this intact. To guard against the deterioration of this outer channel it became necessary
720 to raise this also so that if the sand would fill in, this other part was still protected and I wanted to raise this portion out here (illustrating) above that bottom to keep the sand from coming in and breaking down this channel. I think I can make that clear to the members of the Board if I don't make it clear to Captain Gillette.

Major Raymond: It really don't occur to me to be very material anyhow.

P. SANFORD ROSS called.

By Captain Carter: Q Are you familiar with the work in what is known as the South Savannah District?

A Yes sir.

Q Have you ever bid for the doing of jetty or other work in that District?

A I have bid on all the dredging work advertised and a good deal of the jetty work.

Q Did you examine into the specifications before submitting your bid with reference to the Savannah River work?

A Yes sir.

Q Are you familiar with the method which has been adopted of building mattresses one on top of the other?

A What you might call multiple matting?

Q Yes?

A Yes sir.

Q Did you understand anything about that in the work

721 which was done under the existing contracts?

A For Fernandina I understood that would be allowed.

Q So that if it had been written out in the specifications would it have made any difference to you in your bid?

A No sir; because at the time the Fernandina contract was ready we knew that that method had been used on the Savannah work, a contractor of course could use it; that is, we understood we could make use of it.

Q Are you familiar with the contingencies that may arise in doing contract work in the Savannah District?

A Yes, quite so.

Q May or may not bids for the same class of work vary greatly?

A They are very likely to vary.

Q Will you give me some reason why those contingencies have to be taken into consideration?

A Take our experience in 1893 on the Savannah River. We got into a cyclone there that cost me over $30,000, and we have got to anticipate those things, and of course there are other contingencies which are not only uncertain but the situation as to exposure.

Q Take the character of stone that was contemplated by the low grade stone in the last contract?

A We were told we could use Florida stone.

Q Have you been present at Savannah at the time bids for doing work were opened?

722 A Not always. I haven't always been present when I bid.

Q Have you ever had any difficulty whatever in obtaining all the information regarding the work?

A None whatever.

Q Have you ever heard of any one who ever had any difficulty?

A No sir.

Q Have you ever heard of any one being improperly or unfairly treated with reference to that?

A No sir.

By Colonel Gillespie: Q You say you saw the specifications for Savannah Harbor made in 1896?

A Yes sir.

Q When did you first see them?

A I am not sure whether I was at Savannah at the time

or they were sent to me. I saw them shortly before the opening.

Q They are dated June 6th. Did you see them in June?

A I can't say. My superintendent would probably have seen them as soon as they were issued, then I would see them as soon as he could get a copy and send them to me.

Q You say that from the information you had you knew that mattress work was to be done?

A We knew these multiple mattresses would be used although they claimed that Gaynor had a patent on the method of arranging etc., but I didn't consider that as being an obstacle in the way.

Q Without the information that you had relative to the work would you have been able to bid intelligently on
723 those specifications?

A Except Captain Carter told me that I could use that method?

Q Without that information and without these contractors explaining to you would you have been able to bid intelligently?

A No. I was familiar with the work as carried on at Savannah river and naturally made inquiry and Captain Carter took pains to say who could use that method.

Q You bid $2.60 on fourth class stone. Where did you expect to get that stone?

A That was the poor class that we expected to get at Florida.

Q Who told you you could use Florida stone?

A Captain Carter.

Q It wasn't mentioned in the specifications?

A It had been used.

Q Simply from information you had with reference to work done under previous contracts?

A Yes, and his stating we could use that stone.

Q You didn't find it in the specifications?

A No, I think not.

By Captain Carter: Q Did that make any difference in your bid at all?

A No. I took advantage of that in my bid by reason of your telling me we could use it.

Q So that if I had not given you that information it
724 would not have made any difference whatever in your bid?

A No.

By Colonel Gillespie: Q You did not bid on the Cumberland Sound work on the same day?
A I think not.
Q Why didn't you bid on that?
A I didn't want to load up with too much.
Q Did you supply any material for the contractor to whom that work was awarded in 1896?
A No sir.
By Captain Gillette: Q Have you ever done mattress work on a contract of that kind?
A No large business.
Q What is your main business?
A Bridging, docks, etc. We do a great deal of dock work.

GEORGE W. BROWN called.

Direct Examination by Captain Carter.

Q Will you state your service in the Savannah District, I mean approximately?
A I came to Savannah first in November 1886, was there practically continuously until the end of January 1892 except for about a year between 1887 and 1888. I was away from there three years and returned January 1894, and was there eight months. I was then employed in Savannah to represent the engineering office in November 1896 and was
725 there from that time until August 1897.
Q Are you familiar with the construction of fascines used in the Savannah District?
A Yes sir.
Q Have you had charge of the construction of such work?
A In one case I had charge of the construction of them, and in two or three cases have used them.
Q Are you familiar with the specifications under which the fascines were constructed?
A Yes sir.
Q Were the fascines constructed according to those specifications?
A Yes sir; you mean the ones I had charge of myself?
Q Yes, and I want to ask you whether those which you did not have charge of and which you saw were constructed in such manner?

A Yes sir, all fascines I have seen there have been constructed according to specifications.

Q Where have you seen the fascines?

A On the lower Savannah River in 1886 and 1887 fascines were used on the repairs to dams, and then in 1889 I think it was at upper Savannah River, at the Augusta work. I had charge of the work and we put fascines in there entirely—fascines and stone, and then later I have seen fascines on one or two points on the Savannah River and at Fernandina.

Q When was the latest time you have seen fascines at Savannah or Fernandina?

A In May or June of last year.

726 Q Were all these fascines constructed in accordance with the specifications?

A Yes sir.

Q Has there been any deterioration in the fascines extending over these years?

A I should say not. I should say fascines made at a later date were fully up to those made in former years.

By Major Raymond: Q What later date?

A In June.

Q What year?

A This year. Captain Carter asked me for the last ones I had seen and that was in June in this year.

Q Where?

A At Fernandina in May or June; it was about that period.

By Captain Carter: Q Were the fascines properly choked?

A Yes sir.

Q Will you describe the form of choking which you have seen used?

A The method which was used at Augusta was with two levers possibly four feet long which were connected with a chain about one-third of the way through the larger end, and these levers were placed on opposite sides of the fascines with a chain across the top and by bringing the levers around the fascines were compressed by the chain.

Q Were they properly compressed?

A Yes sir.

Q Do you consider the specifications contemplated the construction of the military fascine?

A No sir.

727 Q Would such a fascine be contemplated for that class of work?

A No, I don't think that it would.
Q What is the principal object in a fascine, weight or bulk?
A For Harbor work I should say bulk.
Q Is the element of weight an advantage or disadvantage?
A In most cases it would be an advantage.
Q Is it an intelligent method to consider the value or cost of a fascine built according to specifications in the Savannah District as dependent upon the weight?
A No sir.
Q What would that depend upon very largely, the weight?
A The amount of wood and the closeness with which the wood was framed.
Q What would it depend upon still more than that?
A The comparative weight of the wood.
Q That may vary then?
A Yes, some woods are very much heavier than others, some will sink while others will float.
Q Have you seen the mattresses constructed at Savannah?
A Yes, I have seen them but not to examine them critically.
Q Have you had any conversation with Assistant Engineer Twiggs with regard to the construction of these mattresses?
A Yes sir.
Q Were those mattresses inspected by Mr. Twiggs or by his assistant or were they inspected by the mattress camp?
728 A They were inspected usually on the work. The mattresses were being built on Amelia Island which was in sight of the engineer, and no doubt they were built and inxtected more or less as they were being built but later on they were only inspected as I remember from conversations with Mr. Twiggs by an occasional visit to the mat camp. However, they were usually inspected as they appeared on the work when it came to measure them.
Q Did you have any conversation with Mr. Twiggs concerning the character of the mattresses?
A Yes sir.
Q Will you state what that was?
A In conversation with Mr. Twiggs I asked if he had to

inspect at the camp and he said no it was not considered necessary to have an inspector there; that as far as the mattresses were concerned the contractors were obliged to build the mattresses better than the specifications demanded in order that the mattresses would hold together and sink. The place being very exposed there the mattresses had to be built very solidly in order to hold together until they could be sunk; and as to the fascines themselves he said that the fascines in the mats would show what they were, and he did not consider any inspection was necessary of the fascines themselves.

Q Could an intelligent inspection of those mattresses from your knowledge of the work determine whether or
729 not the fascines and mattresses were properly constructed?

A Yes, sir, I should think so.

Q Suppose it was the contractor's desire to slight the work and he had some fascines that were good and some that were not good would it be to his advantage to assort them out and put the bad fascines where he thought they would escape detection from your knowledge of the construction of mattresses?

A No sir, I don't think in doing work on a large scale they could assort them that way. It would be no advantage to them. One of those mattresses contains a large number of bundles and it would be very difficult to pile good mattresses in any one place to be used, and bad mattresses in another place, or to assort them as they were being piled.

Q Have you had any conversation with Mr. Twiggs at any time which would leave you to believe that he had the remotest idea that the mattresses and fascines were not being constructed according to specifications?

A No sir.

Q Do you remember at what date it was you had the last conversation with Mr. Twiggs and he said the fascines and mattresses were being constructed better than the specifications required?

A It was when I was there in May and June as I stated before.

Q Of what year?

A Of last year.

Q When you were there in May and June what im-
730 pression did you gather from Mr. Twiggs either by direct understanding or by conversation concerning the mattresses used in the jetties?

A Mr. Twiggs told me that the mattresses after being put in place were being rapidly filled with sand, both as to the mattresses themselves and as to their location, that is they were being filled with sand; the sand was filling the mattresses solidly and was filling up to the side of the mattresses then as I remember it at the time I was there I made surveys of the center lines of both jetties, and in my survey we run across both jetties in many places; on the outer end of the jetties and in fact on the inside of the old inner work the sand seemed to be piling up to the top of the jetties the only way we could find the position of the jetties was by striking the rock. The jetties didn't seem to be above the surface of the local sand. The bottom would seem to raise at the point where you struck the rock and then drop off again gradually.

Q Did you gather in any way whatever from Mr. Twiggs that these mattresses as placed in the work were not performing the work intended or were in any way unsatisfactory?

Q No sir, I did not; they were considered to be satisfactory.

Q Do you know the type of mattresses actually constructed?

A Yes sir.

Q So far as the building is concerned is it more or
731 less expensive to a contractor to construct them in that manner than to leave them as the rigid type called for?

Colonel Gillespie: What do you mean by rigid type?

Captain Carter: Type 3 of the specifications.

Colonel Gillespie: The question then is type three of the specifications?

Captain Carter: A. Yes sir.

Brown: A. As I remember from Mr. Twiggs statement a certain amount of grillage was left out; instead of taking two double grillages to each layer of brush there was only one grillage, and certain other bundles were put in in lieu of the grillage poles left out. I would say those would cost more to make them in several courses than in one. In most cases the brush is piled up when it has to be carried on the gin poles and the higher those poles are the more difficult it is to get the brush in.

Capt. Carter: Q Are you sufficiently familiar with the exposure at Cumberland Sound and the cost of mattress

work in the Savannah District to express an opinion as to whether the price of $1.10 per square yard is excessive?

A I don't think it ought to be considered excessive.

Q Have you made an estimate of the cost of the brush mattresses made of fascines as actually constructed?

A Yes I have made such an estimate in a general way.

732 Q What is your estimate of cost per square yard?

A I made an estimate as to the cost of the work, and as I remember now it was eighty to eighty-five cents per square yard.

Q As actually constructed?

A As constructed and put in the work.

Q Suppose you were a contractor knowing the exposure and conditions at Cumberland Sound, what do you think would be a fair increase over that actual cost to include in the contractor's profits?

A In my opinion at least 25% on all contract work should be allowed for over the greatest probable cost; this place being exposed I would say the cost was liable to be more.

Q Do you know what the actual percentage of loss of mattresses was at Cumberland Sound?

A Two or three mattresses were lost about the time I was there, but I should say as a rule five to ten per cent. I was there before this in March and the weather was very much worse and they were having more trouble they were losing more then than later in the summer.

Q Are you familiar with the stone known as Florida rock?

A Yes sir.

Q Can you tell me whether it was more or less advantageous than the granite for covering the foundation?

733 A I should consider it more advantageous than granite.

Q Why?

A For sinking mattresses because it occupies a greater space for the amount of weight. I mean to say by that that if the mattress will fill up with sand that the higher it lays in the work before the sand begins to fill on then the better the result will be and the Florida stone will occupy more space than the heavier stone.

Q Do you know of any other reason why, for instance at Fernandina, Florida stone is desirable?

A I have an idea that deep sea shells will stick to the stone better than it will to granite. I know that Jekyl Creek jetty

was covered with Florida stone and within a very short time it was thickly covered with sea shells—I have no doubt with sea barnacles.

Q I don't know whether you have made an examination of that portion of the jetty that is there?

A There is a portion of the jetty filled on the inside that is very thickly covered with sea barnacles and sea shells; it is a very tight mass I remember.

734 Q Are you sufficiently familiar with the cost of mattress work to know the difference in the prices of the three designs described in the specifications and to know that they cost approximately the same?

A I should say they would cost approximately the same. If there was any difference in the two mattresses of brush, the second design would be the cheaper, from the fact that smaller binders are allowed, and another reason, the number of binders allowed are not specified; they could be made cheaper than it would be possible to make the others, I think.

Q Referring to the Florida rock; do you know whether or not it was generally understood that low grade rock was to be Florida rock?

A Yes; I understood from conversation with Mr. Twiggs, and my impression was at the time, that that was included in the specifications, or the specifications were written so as to include that.

By Col. Gillespie: Q You had the same access to the specifications that Mr. Twiggs had?

A Yes. I was not on contract work.

Q Were you not assistant engineer?

A Yes sir, but I was on survey work. I have been on surveys nearly all the time.

By Capt. Carter: Q Have you had any conversation with Mr. Cooper concerning the work in the Savannah harbor?

735 A Yes, though not recently.

Q How recently, if you remember?

A It was immediately on my return from the Tennessee river, in January, 1894, or December, 1893.

Q Was there anything said at all concerning how the work was being done, whether it was being done well or not, or anything which gave you an idea as to what Mr. Cooper thought of the work?

A Yes sir. It was, as I said before, on my return, and having been interested in the work, I asked Mr. Cooper how

the work was progressing and what was being done, and I remember that Mr. Cooper stated that the work was being well done and was progressing satisfactorily.

Q Have you had any conversation with him since then, that you remember, concerning the character of the work in Savannah Harbor?

A I can't remember any particular time.

Q Have you known Mr. Cooper well enough to know that if there had been any change in his opinion, he would have stated anything to you concerning it?

A Yes, I think he would.

Q Have you ever heard from him in any way that he considered the work done improperly?

A No sir; on the contrary, my recollection is that the
736 impression I got was, that the work was being done properly. It came about in connection with the work of the contractors. He said the contractors had a good contract and were making money; still, they were being held strictly to the specifications; that he was inclined to compliment himself at the same time, from the fact that the contractors were using a device which he claimed to have invented, and said that by that they were able to save a great deal of money—that is, they were able to make a great deal of money. I think the device of building the fascines on lighters.

Q Did he claim credit for that?

A Yes; he claimed credit for that.

Q Have you heard anything at all from Mr. Cooper, wherein he thought the work was departing from the specifications in any way?

A No sir.

By Col. Gillespie: Q You have testified that the work done at Cumberland Sound was according to the specifications?

A Yes sir; as far as I was able to see.

Q To what part of the specifications does this statement apply.

A As to the mattress work.

Q Have you also testified that the work done was not of the rigid type or type 3; how do you reconcile these two statements?

A As I said, it cost more to handle the brush. I don't understand that the specifications say absolutely that
737 the mattresses shall be made in a certain way. It is true, that the specifications say that this style of mattress shall be used.

Q Do the specifications say that?

A Yes sir, and they also say that certain modifications may be made; they may be increased or diminished, but a proportionate allowance shall be made to the contractors according to what portion of the work is to be done, as I understand it.

Q You have testified also that in a conversation with Mr. Twiggs, that Mr. Twiggs gave as a reason for modifying the mattresses, that he wanted them to hold together when they sunk. Do the specifications provide that the mattresses shall hold together in sinking?

A A single course of mattresses—

Q (Interrupting) Answer my question.

A No sir.

Q They do not?

A No sir.

Q Then, what could your reply as an intelligent man have been to Mr. Twiggs when he made such a statement to you as that?

A The mattresses were being made eight courses deep and they were very heavy, and would have to be thoroughly wired, in order to hold together. The specifications called for binders eight feet apart or not more than eight feet apart, and I don't think the mattresses would hold together and sink, eight courses deep, with binders eight feet apart

738 Q Did the specifications call for mattresses to be piled eight courses? Where did you get any construction of that kind from?

A In the clause which allowed a change to be made in the specifications.

Q Then, there was a change made in the specifications?

A Yes sir. I would modify that last remark by saying that I did not mean to say there was a change made in the specifications. I meant to say that the specifications allowed a change to be made in the manner of making mats.

By Capt. Gillette Q You testified that the specifications for fascines do not contemplate a military fascine. Will you give an outline of a specification calling for a military fascine; give the outline of the specifications as you would write them?

A I am not used to writing specifications, but I can name over some of the requirements, I think.

Q Give me what you would put in?

A That the fascines should be made of brush perfectly

straight, without any limbs or leaves, and tightly choked. Of course, the size would have to be specified, and all that.

Q Is that all you would put in?

A It would depend upon the purpose for which they were to be used. The size and length. I think that with the requirements that the bundle of brush should be choked as tightly as possible, would cover it.

739 By Capt. Carter:

Q In sinking eight mattresses placed on top of one another, would it or would it nor be necessary to have that combination of mattresses held more tightly together than would be required if each mattress was sunk separately? In other words, would the effect of the sea on courses of mattresses be greater or less than on a single mattress?

A It would be very much greater.

Q So that, if a statement were made to you that a mattress was better than the specifications called for in order that the contractor might not lose them, does that necessarily mean that a mattress made according to the specifications would not go into the work?

A No sir.

Q It means the factor of safety is increased?

A Yes sir.

Q Then, the factor of safety as covered by the specifications is simply for the contractor to protect himself?

A Necessarily, for the contractor.

Q To reduce his percentage of loss?

A Yes. As I understand it, Mr. Twiggs said, in a general way, that it takes something near a ton of wire to hold one of these mattresses together.

By Capt. Gillette:

Q You have testified that ten percent of the mattresses in Cumberland Sound were lost?

740 A In my opinion, five to ten per cent.

Q What is your opinion based upon?

A On conversation with Mr. Twiggs and seeing the work which was being done there.

Q Did you ever know of more than one or two mattresses being lost?

A When I was there only one was lost.

Q As far as you know personally, only one mattress was lost?

A Yes sir.

Q How do you arrive at eighty to eighty-five cents per

square yard for mattresses built at Cumberland Sound, eight courses thick?

A That is based mainly upon Capt. Black's figures as the cost of the work at St. Augustine.

Capt. Carter: I Produce now Mr. Twiggs' blue print of a report, showing the condition of the mattress work at Cumberland Sound, and showing the manner in which the sand was deposited, and that none of the work was destroyed. It is dated June 15, 1897.

Marked "Exhibit No. 1, October 18, 1897."

(Memorandum, See Court Martial Record vol 18 p 3969)

M. A. CONNOLLY, called:

Examined by Capt. Carter.

Q State what position you occupied in Savannah?

741 A I was clerk in the United States Engineering office from September 1, 1888, until August 2, 1897.

Q Will you state the general character of the instructions given to the employes?

A That every thing that was to be done should be perfectly right, and nothing should be done that was not according to the regulations or rules of the office.

Q Tell me whether you recognize this book (Showing book to witness)?

A Yes sir; that is the book of rules governing the employes in the Savannah District.

Q Can you tell to whom this book was issued?

A It was issued to everybody in the employ of the office; clerks, inspectors, recorders and draftsmen, and everybody else in Savannah and out of Savannah, Fernandina, Brunswick, etc., I issued some of these books and I know. Those not issued by me were sent to the other employes.

GEORGE W. BROWN, recalled:

By Capt. Carter:

Q I want to ask you if you are familiar with this book (Showing same book to witness)?

A Yes sir.

Q State for what purpose those books were issued?

A They were issued for the guidance and instruction of all employes of the United States Engineering Depart-
742 ment in the Savannah District.

Q Were any departures from the instructions contained therein authorized?

A No sir.

By Capt. Gillette:

Q Is there anything in this book anywhere that requires that work shall be done according to the specifications, or that a certificate to that effect shall be signed by the employes?

A My impress is that there is such a requirement in that book.

Capt. Carter: That is all provided for in the book, whether he remembers it or not; it is in the book.

The Witness: The reports are all sent in every ten days and certified to.

Q That the work was done according to the specification?

A Yes sir. I don't remember if it is in those words, but the certificate says which is appended to the work, "I hereby certify, on honor, that the above is correct," or something of that sort.

By Capt. Carter:

Q Suppose you had received instructions that no work should be measured unless it complied with the requirements of the contract; would you consider that you could make a certificate and report it as correct if it did depart from it?

A No sir.

743 By Capt. Gillette:

Q I don't know that I got your earlier testimony. Where were you in 1889?

A I was at various points in the Savannah District.

Q Did you leave there during that year?

A No sir, I think not; still, I don't remember.

Q Were you in the Savannah District at the time Col. Hughes came there?

A Yes sir, the Inspector General.

Q You appeared there before him?
A Yes sir. I was then upon a survey of the Savannah River.

Capt. Carter: I would like to place on record an extract from this book, which can be certified to or examined by the Board:

"93. The general duties of an inspector are to inspect and "examine material and report whether the material and work "are in accordance with the contract or not.

"96. He must thoroughly comprehend the specifications "and his general instructions.

"102. Mattresses will first be carefully examined and the "inspector must satisfy himself they are constructed in ac- "cordance with contract before he accepts them for measure- "ment."

With regard to the estimate of the cost of brush mattresses made by Capt. Black, I desire to invite attention to the fact that he states his ideas as to the costs which were obtained from work done under his supervision at Mayport 744 by Mr. R. G. Ross, whom he states he considers an experienced contractor and in whose opinion he has confidence. In addition to this where Capt. Black has testified that Mr. Ross has done work at Cumberland Sound and hence is thoroughly familiar with the conditions existing there and knows the relative value of the cost of similar work at these two points from actual experience. Mr. Ross has also examined carefully the fascines and mattresses built at Cumberland Sound under the contract of 1894, which mattresses were built and sunk exactly like those under present contract. He also testifies that he has been a contractor for over twenty years and that during that period he has been extensively engaged in constructing and superintending the construction of brush fascines and mattresses at various places on the South Atlantic coast, under contract with the United States government; that from personal inspection and examination he is thoroughly familiar with the locality and all the conditions existing in relation to the government work at Cumberland Sound; that he examined the specifications for the work at Cumberland Sound, which was to be laid in 1894, and made a bid for the doing of the same; that at that time his bid was for certain reasons made very low—I have not the figures—he did bid, but that is in this list; that in the year 1896, he examined the specifications for the work at Cum-

berland Sound and prepared a bid for the work, but that
745 on account of the financial condition of the country, he did not submit it; that he knows how the brush fascines and mattress work were to be built at Cumberland Sound under the contract of 1894, and they are alike in all respects to those built under the contract in 1896; that he knows that the construction of the fascines at Cumberland Sound under the contract of 1894 were properly built and like those built by him under his contract at Mayport; that the mats at Cumberland Sound were built as well as those built by him at Mayport; but in his judgment each mat cost a little more per yard to the contractors to build in that way than singly as at Mayport, but the sinking was a little cheaper, if the contractor had good luck, so on the whole the cost was about the same; in his judgment, it would cost the contractor ten to twenty per cent. more for mattresses at Cumberland Sound than at Mayport, on account of the exposure and strong currents and other difficulties; that he fully understood how the mats were to be built and sunk, and he knew also that the fourth class rock was to be Florida rock; that in his judgment, the three designs of mats cost about the same; the brush ones, how, ever, cost something more than the log ones, but he was of opinion that the third class mats were the ones which were intended to be used in the work, and he says that the prices for the work as finally let at Cumberland Sound
746 were, in his judgment, reasonable and fair.

Mr. Hathaway, who also did the work at Mayport, and who, it is said, lost money at seventy-five cents per square yard for mattresses, testifies that the mattresses and fascines at Fernandina are like those at Mayport. Mr. Hathaway's statement will be submitted a little later. I have that information from him. I wanted it in the form of an affidavit instead of the way in which I got it, and I will submit that a little later.

With regard to the statement of Mr. Twiggs' that the mattresses were not constructed according to specifications, I state that Mr. Twiggs had informed me on the occasion of my personal inspection at Fernandina that the work was being properly done. This conversation took place usually on my boat, and I have here an affidavit of the Master of the boat to the following effect—

Col. Gillespie: If you have the affidavits of these gentlemen, Capt. Carter, I don't think it is worth while to read them because they will all be submitted with your statement.

Capt. Carter: Perhaps that is so, but I will submit the affidavit of George L. Gamont, Master of the United States steam launch; also the affidavit of Thomas H. Laird; also the affidavit of Mr. Daniels. Referring to these various estimates of Mr. Geisler I have gone into and analyzed them, and with reference to the mattresses seventy-five feet by fifty, he estimates it will take one hundred logs and states that they must be constructed of average timber of twelve inches. That simply shows the system under which he is working and shows that the whole thing has been worked out with a view to increasing the cost of the first design and minimizing the cost of the design of the mattresses laid in courses.

747

Concerning the financial responsibility or reliability of Mr. Hancock and Mr. Foley, who claim they were not treated properly, I have said it would be right for me to go no further with reference to that subject than to obtain a certificate of Mr. Osborn, which I read; I also read the affidavit of James B. Connolly, Parker F. Harrington, Martin McGuffog, Hamilton E. Garmany, H. M. Garmany, W. T. Toschack, James C. Rossiter, J. C. Heyward, J. F. Kelly, Thomas H. Laird, George H. Palin, J. E. Nicholas. I have also sent to have these men make a sworn statement as to how these mattresses were actually built; I mean, in detail. I also submit the affidavit of J. F. Sanford, Samual W. Skinner, Thomas F. Wallace, William F. McCauley.

Col. Gillespie: Where were these prepared, these two affidavits of Wallace and McCauley?

Capt. Carter: I don't know whether these were prepared at Wilmington or in Savannah. I was sending up to Skinner and Wallace for a memorandum of the work that was done, and asked them if they would send me several papers.

748 Major Adams: Who drew up McCauley's affidavit?

Capt. Carter: The language was written out by me after McCauley stated to me his recollection of the matter. In other words, I sent for him and asked him to state to me what he remembered of this matter, and McCauley stated it; I have put in that language; and that was done with the others, for instance, Ritterhouse, Moore, Friday, Hathaway and Grimm. R. G. Ross I had nothing to do with. They fixed up all this by themselves. I also read the affidavit of R. Moore—

Col. Gillespie: Where was that prepared?

Capt. Carter: He prepared that paper here. I also read the letter from Mr. Friday.

H. R. DUVAL, called:

By Col. Gillespie:

Q Have you ever had any business relations with Capt. Carter in any way, shape or manner?

A Yes; I have had on a number of occasions business relations with him during the past eight or ten years.

749 Q Will you please state what those relations were?

A They have been many. In the first place I was connected with the River & Harbor matters at Cumberland Sound, more in the way of observation duties than officially, and he seized a lot of my property and I had relations with him about that. Then we got into court and I had relations with him about the bridges over the St. Mary's, Santilla and Altamahah Rivers, and then I had some relations with him regarding the contract for doing the work on Cumberland Sound. I fought the bid on that work myself for the railroad —that is, this last time, when it was laid a year or two ago.

Q I would like to know what your relations with Capt. Carter were?

A We owned a lot of property known as the Reed Mill Site at Fernandina, and Capt. Carter claimed that it belonged to the Government, and I endeavored to show him it did not. I could never satisfy him, and finally I instituted suit against a man named Bigalski, the man that was in charge. I never questioned Capt. Carter's motives for doing this, as I believed he thought it belonged to the government. I tried, however, to convince him that it did not belong to the government, but Capt. Carter maintained his position and finally I commenced suit in the District Court down there, and I am sorry to say that the suit went against us, but we have appealed it and don't doubt, by the advice of our coun-

750 sel, but what the outcome will be all right. In fact, I offered to Capt. Carter that I would give him what he wanted for river front, but he refused to take it. Then, in our purchases at Santilla, St. Mary's and Altamahah, and also St Augustine, after we supposed we had complied with his specifications, he made us make extensive alterations. Then I had some business with him about the snag boat which I thought he ought not to have charged me with. He assessed us on that pretty heavy for the snag boat at Altamahah river while we were making alterations which he himself proposed should be made, and I paid that. Then, in the matter of the Cumber-

land Sound improvements—I had been before the River and Harbor Committee several times, and Capt. Carter was explaining the method and plan of that work, and I had him called there several times in several capacities before the members of the House Committee on River and Harbors. I had, of course, nothing to do with it than sit there and listen to what was said, yet I never consulted with him upon a commercial requirement of the port at all, but simply sat there and heard him as the various committees would call him to make his statements on the subjects. In the matter of the contract for doing this work at Cumberland Sound I have never done any of it, but I took it into my head that it would be a good thing for our railroad to do, as we had the
751 terminal there and plant and the character of stone, and all that, and all that he told me they would want was a soft stone for the lower grades and heavy stone for the upper grades. I had all the soft stone in Florida and the heavy stone at Columbia, and I thought I would undertake to do that work. I had nothing more to do with that than he gave me a plan and specification and I had some correspondence with him,—or rather interviews with him about the cost of the necessary plant and the capital I would require. The plant, I think he told me, would cost depending very much on what the railroad had, and he thought I could supply the plant cheaper than an ordinary contractor by reason of having the railroad cars, rails, and everything that was there necessary; that I would require some barges and tugs, but the tugs I controlled anyhow, and I think he told me what they would cost.

Q How much did he say they would cost?

A I think he told me fifty to seventy-five thousand dollars. Then, I had some talk with him about how much capital it would require, and he was under the impression that with the road doing the work, it would not require any capital, because I could carry it all on my pay-rolls, the freight, and that I could no doubt, with the credit of the railroad and the people who were behind us, manage to get the government vouchers discounted. Well, I abandoned that work
752 because a number of contractors in Florida, such as Rutherford and the Atlantic Contracting Company and another man by the name of Grimm, were all patrons of ours, and they all said they would haul the stone over our road, and our officers advised me to give that up and not come in competition with them. It was away out of my line, also; and then these men said they would all give me transportation,

and I thought if I could do that, it would be better, and I knew well that if I lost it I would make enemies of the men who would be very good patrons of the road; so I abandoned it. Then, I don't think I ever had any further conversation with Capt. Carter except as to the matter of freight rates. I have always been very careful never to presume upon my personal relations with Capt. Carter on account of my business, but the rates we established were $1.50 from Columbia, South Carolina, and $1.00 a ton on Florida stone. On account of the contractors informing me they would have to have 500,000 tons of stone. That seemed to be satisfactory to everybody who was going to bid there, as I was informed by the officers who were watching it, and satisfactory to Rutherford and the Atlantic Contracting Company, and I took it for granted that it was settled they were going to pay my rates on the stone. Very much to my surprise, Capt. Green of the Atlantic Contracting Company, came to my office and showed me a let-
753 ter from a barge company offering him the contract to carry stone at fifty cents a ton delivered; they would put on enough barges to take this soft stone down and hard stone, both delivered at the works at fifty cents per ton, and they endeavored to have me reduce my rates. They finally agreed to contract for a lot of that stone at seventy cents a ton from Florida and $1.25 from Georgia, if I would reduce my rates from $1.50 to $1.00; otherwise, they said they would take it at fifty cents and take the barges. I didn't believe the barges were practicable, and I believe that is the only time I took advantage of my personal relations with Capt. Carter when I asked him about the barges. These men said that they would save $150,000 to $200,000 if we accepted these barges. I did not believe the barges were practicable, and Capt. Carter concurred in my suggestion. I didn't ask him to but he did,—that it was not possible to use the barges on account of the storms and tides on the Atlantic Coast. In fact, it had the effect of setting me up very much. Capt. Green said, "We will give you some of the stone." And in reply, I said, "You will give me all; otherwise, your rates will be higher." The Traffic Manager of our road happened to be present at the time, and he said that was a special rate we were making provided we had all the stone, and that if they did not give us all the stone we would charge the regular tariff rate.
754 Capt. Green asked what that was. I said I didn't know.

Turning to Mr. Pennington, he said it would be two dollars. I don't think I ever saw Mr. Green after that, but I

talked several times with Mr. Gaynor after that, and he agreed to give me their stone for one dollar at Florida and $1.50 at Columbia.

Maj. Adams: Which Gaynor was that?

The Witness: There are two of them—John, and then there is the other brother.

Q Where did this conversation take place, and when?

A This conversation with Capt. Green took place in my office in New York, I think, some time in October, a year ago. I had just returned from Washington, where I had been over to see Secretary Lamont, I think, about this work.

Q In October, 1896?

A Shortly before that time; perhaps it was earlier, but I could not tell you definitely, but I could tell by referring to memorandums in my office.

Q You have used the word "we;" to whom do you refer?

A I mean the Florida Central & Pensacola Railroad Company.

Q What relation do you bear to that company?

A I am the president.

Q Is Capt Carter a stockholder in the road?

A No sir.

Q Has he ever been?

A No sir.

Q Have the Gaynors been?

A No sir.

755 Q Has Green been?

A Never. The stockholders in our road who control it are Messrs. W. Bayard Cutting, R. Cutting and myself, Mr. Thomas E. Platt of New York, the Senator, and the balance, with the exception of men with whom I am very familiar, is held in Amsterdam.

Q Now, you may continue as to the result of this conversation with Capt. Green?

A Capt. Green backed out and said, "We will see about it." Afterwards, in my conversation with the Gaynors, they assured me it was all right. I told Mr. Pennington when he returned to Florida to come to an understanding with the Gaynors and let them understand they would pay two dollars a ton or they would agree to haul the stone over our road. The Gaynors had always assured us that for the third and fourth classes they had paid for soft stone, Florida stone; that was understood everywhere. Rutherford talked with me about it. I don't remember the classes, but I know it was under-

stood from these contractors—and I never talked to anybody but Rutherford and Ross and Gaynor—that the bottom stone was to be a soft Florida stone, and the hard stone was to be sac granite as we had in our quarries at Columbia. Then afterwards Gaynor assurred Pennington that all the stone would be hauled over our road; that he had a contract
756 with the Company in Georgia that proposed to give him 100,000 to 150,000 tons of hard stone, but he would get out of that contract and give it up. Afterwards I saw Gaynor myself in Washington. I have seen Capt. Green since. Mr. Bayard Cutting and myself went to Washington and stopped there to see Secretary Lamont about this matter, and we met Gaynor and Green at the Potomac station, and I was assured it was all right and that all the stone should go by our road.

Q Do you know whether any of this stone that was delivered over your road was condemned at any time?

A That I do not.

Q You were never compelled to haul any back?

A That might have been, but I have no knowledge of it.

Q These are what you might call official relations with reference to government work of which Capt Carter was in charge?

A Yes sir.

Q Did you ever at any time have any private relations with Capt. Carter?

A None, except a very pleasant friendship.

Q I mean, in any operations in which money was involved?

A None whatever.

Q Any investments?

A None whatever.

By Capt. Carter:

What would have been the effect on you and also on the Atlantic Contracting Company if I had not assured you that in my opinion the method of bringing stone by barges was impracticable at Fernandina?

A I think I would have reduced my rate to seventy cents, probably to eighty-five cents, anyhow to seventy cents, from Florida, and to a dollar, anyhow, from Columbia, and you can calculate what that would have been. After I had this talk with you, I went and talked with our General Manager and Traffic Manager, and after getting all the information we could get about it, we felt just this way: there were 500,000 tons; a reduction of thirty cents a ton was $150,000 to us and $150,000 to the contractors; in fact, Capt. Green said that I

should not take exceptions to his attempt to do that; that I must remember it was a very large work and that fifty cents a ton would probably be $250,000 to him, and of course, I did not tell Capt. Green that I had consulted Capt. Carter about it.

Q In other words, if I had wanted to do so, I could have gotten you to reduce the rates?

A If you had advised me so to do, I would have made my rate fifty cents. I would have done anything to have kept anybody else from hauling that stone.

By Col. Gillespie:

Q Were you a member of the Atlantic Contracting Company?

A No sir; I would not have had any relations with them as president of my road if I were.

758 Q Or was any member of your company, that you know of?

A No. I would like to explain that matter. We believed of course, that it was for the best interest of the road to have that work done properly, because it is a port for the railroad, and I own a great deal of property at Fernandina and so does the railroad, and from our own experience we know that where it is to go under salt water it very soon is covered with barnacles and gets solid, whereas, granite and hard stone don't. We, for instance, put up a dock at Cedar Keys in 1873 and made a crib of palmetto and just threw the Florida stone in there. Now the palmetto has rotted away and the Florida stone is a solid mass. At Fernandina, where we have rip-rapped our dock, there are places where the stone is such a solid mass that the General Manager of the road told me that he believed it became such a solid mass that even water didn't go through it, whereas, right adjoining this it is as loose to-day as it was when first put down; and I believe in trying to keep this Florida stone in use, because you get the best results for the work done. It was more important to me because it was a matter for all time, and of course, it was natural that I should work it in my own interests.

759 By Capt. Carter:

Q You have large interests in Fernandina and therefore were interested in the success of the work that was there?

A Yes sir.

Q Did you at any time hear any criticism of my conduct of that work?

A None whatever; nothing to affect you at all; nothing to injure you at all; I have heard complaints that you were unjust to your inspectors in being particular with them.

Q In what way?

A In the way of taking exceptions to work, for instance, which delayed the work and at the same time was not necessary.

Q But never that I was unfair to them?

A Never that you were unfair to the contractors at all; no.

Q Or to the inspectors?

A No. They said you were very critical and that you made changes and even condemned work which they thought was all right.

Q If there had been any well-founded criticism, or criticism of any one man whose opinion was worth having, of the work, would you probably not have heard it?

A Yes, because I was regarded as responsible for the work; it was I who took that work up through all the various committees in Congress.

Q I mean the actual execution of it, down in Fer-
760 nandina; in other words, if work had been done there which was not the right sort of work, or the contractors had not performed their work according to their contract and had not done good work, don't you think you would have heard something about that, either yourself or through some of your agents down there?

A I would have heard it through some of our people. I don't think that anything could go on there very well without my knowledge when I was on the spot, but it might be that I would not have heard of it.

By Col. Gillespie:

Q Did the Atlantic Contracting Company ever pay your expenses in Washington?

A No; I never had any. I never spent a dollar in Washington more than to keep a man there occasionally to just call the attention of his friends who were on the Harbor Committee to a certain thing, and $1200 would pay every cent I ever spent there. I never used any lobbyist at all. I have gone myself direct to those people:

Q I did not clearly understand what you said was the contract rate on Florida rock?

A One dollar.

Q What was it in previous contracts?

A I think, seventy-five cents.

Q Has it ever been higher than a dollar?

A I don't think so. I don't know. I think not.

761 Capt. Carter: I read also the affidavits of J. L. Grimm and E. L. Friday. I have sent to get a statement from the men who actually built the mattresses both at Savannah and Fernandina and as to how they did build them exactly. There is another thing which I wish to state, and that is, that I have received a telegram from Savannah stating that the statements of the jurors had been sent on in the Brown case, and I might invite the attention of the Board to the fact that I have not been furnished by Capt. Gillette with the name of that person he mentions.

Capt. Gillette: The nearest I can come to it is that he was a man by the name of Logan. I don't know that he was the man who made that statement.

Capt. Carter: He not giving me that, the only way I could do was to get the statement of every juror in the Brown case, which I have obtained, or at least, I have a telegram that they have been sent. I also asked to be down here these men, Edward Gaynor and William Gaynor, who were formerly in charge at Savannah and at Fernandina. I have not seen William Gaynor, but Edward Gaynor told me that his brother would be here this morning and that they both would be down here. I have brought in all these affidavits because these men are the competitors of the Atlantic Contracting Company and they, in connection with that Company,

762 have done about all the work of this character that has been done on the Atlantic coast and know what that work actually costs.

I asked Mr. Brown to make out his estimate of eighty-five cents a square yard in detail. The detailed estimates that have been submitted before I have analyzed, and the first criticism I have to make is, that the estimate of Mr. Giesler is false throughout the whole thing and is of no value. The statements of Captain Black and Guilard are very nearly right, but their premises are wrong, they having worked out the cost of mattresses which were not built and nothing like anything which I ordered built or which I was building. Of course, I was not on the Fernandina work all the time and I do not know of my own knowledge that there was always the same kind of work put in that I saw, but I believed it to be the same, and at the time I saw the work it was satisfactory and being done properly, and that was the only guide I had

to rely upon, the honesty of my assistant engineer, and I know that not only through him, but through men with whom he talked, I received the impression that the instructions were being carried out and the work done according to contract.

I have also sent for the sworn testimony of the men who actually built the mattresses, as to how these mattresses were built, the character of the fascines, how they were made, and the character of the brush, and when that is obtained it will be very easy to determine by an estimate what it
763 would cost, approximately to build these mattresses. I think about seven per cent of the mattresses built broke to pieces, and the contractor lost them; in other words, that is a loss which of course can only be determined by years of experience, and in some other cases, the actual risk might be ten per cent. It is caused by the exposure of the work, and not only that, the experience of the contractors and the character of the men who handle that class of work should have great weight, so that those things will have to be taken into consideration in any fair estimate of cost of any work, and I thought of no better method of determining that than to get the statements of men who know exactly what this work has cost, because they have done the work and have received and disbursed the money for doing it, and they know by what is left over just how much they made or how much they lost.

I have also asked Mr. Bangs to send to me a statement. I have been informed and I believe it is true, that he lost on the Fernandina work between forty and fifty thousand dollars under his contract of 1894, and I asked him if he would not give me a sworn statement as to the actual facts in that case, and I don't believe he will. I have not seen him.

But I want to say this, and that is, that I have always
764 wanted a contractor to get a fair price for his work.

I have never believed it to the interest of the government to have the work done below cost. When I got that work I wanted it done well and in the best manner possible, and that was always my instructions which I gave every single assistant on the work, because my reputation was at stake and the reputation of the corps of engineers, and I wanted to make a success of every piece of work I started in to do. Now, when I awarded the contract of 1894 to Mr. Bangs, I recommended it to Mr. Bangs at what I believed to be largely below its cost, because I knew him to be a man

of standing and he would carry through the contract even at a loss. They had had that work for some time and I knew there was some feeling between the contractors, and I know that whether it was to be carried out by him at a loss or at a profit, he would carry it through If it had been a contractor whom I knew was simply bluffing, I would not have recommended it, knowing it to be below cost, but when the contract came in at $1.10 a yard and it cost him eighty-five cents a yard, I deemed the price reasonable, because I believed it cost the contractor to do the work about eighty-five cents per square yard, and that being the case, it would leave him only a reasonable profit, as I considered. I was fortified in that by the discussion before the Board in December, 1895; the
765 details of the discussion I don't remember. I only remember that we agreed that the price of a dollar per square yard was a reasonable price. This differed from that by ten per cent, but I do not believe and I did not then believe that if I had recommended the rejection of these bids that I would have received one cent lower bid for the work. It may be possible now, that I might have, in view of the changed financial conditions of the country, but I don't feel that I would; still, it may be so, but feeling that it was a fair and reasonable bid, I recommended it for acceptance; and in that opinion the Chief of Engineers must have concurred with me, as he knew the work thoroughly, as my recommendation was approved, and then the contract was entered into.

Regarding the manner of departure in the custom of reports; my methods may be different from those of other engineer officers, but surely, I knew the division engineers and the Chief of Engineers were very familiar with what I was doing and approved of it. If I had any idea that it would have been necessary to have done more than report in writing as I did, surely I would have done it, because there was no object in the world in my not doing it, except the fact that it never occurred to me that anything further was necessary.

With regard to the actual construction of these mat-
766 tresses; I know that that was understood, and I am fortified in that belief by this circumstance; I believe it was in the spring of 1894, that a letter was given by the Chief of Engineers to French Engineers who came to Savannah. At that time we were working—sinking several courses of mattresses at a time, and the method of launching them had been a matter of considerable discussion, although we got them off without difficulty; and when I took them down the

river, in this instance, as there always is, there was feeling that something was going wrong; but happily it did not, and I remember when in Washington speaking to the Chief of Engineers and telling him what I had done and how much pleased I was with the success I had met with. The method of building these mattresses and sinking them must have been understood, as I talked with everybody about it and I was very glad to be able to do it. I believed then and I believe now that that was the only method by which I could have done that work within the estimated cost, and I do not believe today that if I carried on the work the other way I would have been down as far as Pulaski and the river would never have been improved.

Now, regarding the cost: I can form a pretty close estimate, because I think I have been in every mattress camp and every brush camp and have gone all over the work
767 and made notes of this, and I believe I know approximately what the thing costs to the contractors. Of course, it varies and I think I know the average, and in that I have been fortified by the average of prices down there. It goes without saying that in a place like that it is not possible all these years to have no competition. Of course, these men who go down there are men of individuality and men of character and who desire to do the work. Moreover, in addition to that, I know approximately what these cost.

Now, regarding these changes which were so minor that I considered then and consider now that they were in strict accordance with the contract, because it only changed slightly the method of construction as provided for in the contract. I have asked the foreman—the controlling man in the company, as I remember it, not being there—and remember, however, I got scared at this—he said, that the only way he could get them off was to get a tow boat and knock them off. He put in longitudinal compartments that would give a tip to them, but it was found that you had to have a sudden jerk; you can't do it by inclination, and if he built them too steep they were liable to jump off in towing; it has to be some sudden move; but before that time the contractors would have made more money on the Savannah contract in 1892, by continuing exactly as he was doing. Now, on the Fernandina contract in 1896 and the Savannah contract of
1896, I believe all the contractors stated this, that it was
768 more expensive to build the mattresses as they are building them, but it is cheaper to sink them. That I believe

to be true. Undoubtedly, it is common sense. It must cost more to build the mattresses. The sinking after they have been launched is cheaper. Of course it costs more to handle a big mattress possibly of several layers of mattresses on top of one another, but it don't cost the exact number of times more that the big mattress is over the little. But taking everything into consideration, I don't believe there is any material change—and these contractors also stated that they did not believe there was any material change—but even if there were, they all bid, knowing that they could do that work in that way if they so desired, and that was the method of sinking, the detail of which I did not put in the specifications because it was patented, as I said. At that time I did not know what the patent covered.

Regarding the supplemental contract: the foreman when he started in on that work, of course, had no experience in building these things one on top of the other, and he didn't want to do it, as they were getting along all right. For one mattress they didn't need a big plant, but of course, it was
769 left, as it would be, to me. I have always found the contractor willing to please the engineer officer and to make a number of experiments and do things sometimes may be which bothered him a little, because he might do something or other whereby he can make it up somewhere else, and I have always found my contractors willing to do anything within reason that came under the terms of the contract. So I asked him to make these changes; but he never knew whether or not he would strike any snags which would knock out his method. As it was, if he could not do that thing under his contract, of course, he had the right to go back and not bind himself to go ahead and do something which might increase the cost. I do not believe it would have been possible and I don't think it would have been for the interest of the United States at all, but that method of doing it did not change the cost at all to the contractor. And even though it did increase it slightly, I have thought it didn't make any difference to him, because if it had, in the long run, he would have kicked against it, and I thought it may be about the same thing; but it did make an enormous difference to the United States, that I know; and as I said before, knowing this thing was known and knowing that it was for the interest of the United States, and being absolutely satisfied that it was not of any benefit to the contractor, I did not consider it necessary to make any special

supplemental report to the Chief of Engineers. I put it
770 in my annual and monthly reports and it never occurred to me that the Chief of Engineers was never satisfied.

Col. Gillespie: It does seem to me that these matters of necessity must go into a written statement, and I think it swells up the record.

Capt. Carter: If, in the judgment of the Board, I did make a mistake, I merely want to show how it was. There was no reason in the world if had thought or dreamed it was considered necessary that I should not have done it.

Col. Gillespie: Were the specifications in 1896 widely distributed?

Capt. Carter: They were so widely distributed that I had to request at the time that if they did not bid to return me their copies, because I was afraid I was going to run out of them.

Col. Gillespie: When was the first copy issued?

Capt. Carter: I don't know. I know it was sent just as soon as we got them from the printers.

Col. Gillespie: They were all dated June 6th; that is the date of the advertising?

Capt. Carter: Yes sir.

Col. Gillespie: When was the first specification issued?

Capt. Carter: That I don't know. It was issued
771 very soon after.

Capt. Gillette: That telegram says August 24th.

Col. Gillespie: Suppose that to be true and the bids were opened on September 8th; isn't that rather a short notice?

Capt. Carter: From August 24th to September 8th, Yes that was short.

Maj. Raymond: How many bidders were there?

Capt. Carter: I think there were three or four; we never had many bidders down there, as Capt. Black explains; it is very risky sort of work and there are very few bidders who care to undertake it.

Col. Gillespie: Was Mr. Bangs a member of the Atlantic Contracting Company?

Capt. Carter: I think he was—I don't know whether he was a member of the Atlantic Contracting Company all the time. I thought probably he had stock. It is an incorporated company and not a firm, and I supposed that these men probably all had some stock, but as a matter of fact, I learn that he has none.

Col. Gillespie: You thought then that he was a member?

Capt. Carter: Do you mean that he had stock

Col. Gillespie: Yes, was interested in the company?

772 Capt. Carter: I thought perhaps he had stock in the company.

Col. Gillespie: Why did you accept him as a bondsman?

Capt. Carter: Because he was not an officer of the company. You can accept any man who is a stockholder in a company on a bond so long as he is not an officer of the company. That wouldn't make any difference to me, if I knew the man was responsible.

Col. Gillespie: He was on both bonds?

Capt. Carter: Yes; he is a thoroughly responsible man and I knew enough of his financial standing to satisfy me that he was perfectly satisfactory. I think it distinctly states that no officer of a corporation. If it was a firm, that would be a different thing. If a man was a member of a firm, then I would not do that. I have the certificate of incorporation. When they first bid I took the precaution to have them send me a certificate of incorporation, and as I remember it, it was incorporated under the laws of the State of West Virginia.

Col. Gillespie: Was Mr. Hughes a member of the company also?

Capt. Carter: I don't know; if he had been a stockholders, that wouldn't have made any difference if he was

773 a responsible man, unless he was an officer of the company.

Col. Gillespie: How did you come to accept W. T. Gaynor as a bondsman?

Capt. Carter: He was not an officer of the company.

Col. Gillespie: He was the president of the company.

Capt. Carter: Oh no; that was John F. Gaynor.

Col. Gillespie: E. D. Green?

Capt. Carter: He is not an officer of the company.

Col. Gillespie: He is a member of the company.

Capt. Carter: He may be a stockholder, but not an officer.

Col. Gillespie: How many stockholders are there?

Capt. Carter: I don't know. I may be wrong in all this thing. I just knew these men had been working together, and I naturally assumed that may be they all did hold certain stock in this company, but I didn't know it.

Col. Gillespie: That is to say, you made a contract with

the company and then took the members of the company as sureties?

Capt. Carter: As matter of fact, I learned afterwards I did not.

Maj. Raymond: There is no objection to that, is 774 there?

Capt. Gillette: Capt. Carter said a moment ago that he asked for the return of copies of the specifications for fear he would run short. Did you begin that with the first ones you sent out, or afterwards?

Capt. Carter: I don't remember in this case whether I did that in the beginning or at the end. I remember at one time I had to send and have people return all they had, so that at this time I might have taken the precaution to ask them in the beginning if they did not intend to bid, to return them. I don't remember; the record will show.

Capt. Gillette: Why didn't you order enough specifications printed so that you could distribute them liberally and lavishly anywhere?

Capt. Carter: Because I was not running an eleemosynary tract society. I wanted to send specifications everywhere, but it was not necessary for the interests of the United States to print enough to scatter them broadcast all over the land.

Capt. Gillette: What would be the objection to that?

Capt. Carter: None, except the absolute waste of money to print the specifications; that is all.

Capt. Gillette: What was the size of that contract; 775 how much was to be expended at Cumberland Sound altogether?

Capt. Carter: The proportion of course, is small—exceedingly small, but that does not justify an unnecessary expenditure simply because the proportion is slight; that has nothing to do with the case.

Capt. Gillette: You don't answer the question; I asked, how much was to be expended in this?

Capt. Carter: About two millions of dollars.

Capt. Gillette: Do you remember approximately what a thousand extra copies of the specifications would have cost?

Capt. Carter: Very little. I submit, however, that an unnecessary expenditure of only a few cents is no more justified when there is a big contract than when there is a small contract. It depends entirely upon the necessity.

Capt. Gillette: Supposing, that by such lavish distribution you could have gotten one more bidder, who would have

bid one cent less per ton on rock; wouldn't it have justified the expense?

Capt. Carter: I should have been exceedingly pleased to have had more bidders, and if that would have contributed in the slightest degree towards obtaining them, certainly I would have felt justified, but as a matter of fact, it did not

Capt. Gillette: It might, however, might it not?

776 Capt. Carter: I doubt that, because when you are a little older you will know that work like that is talked about by contractors for months in advance. Every man who has money enough and experience enough to bid on that sort of work knows in advance of the passage of the River and Harbor bill all about the work and is preparing to make his bid and plans, and there is no piece of work of anything like that magnitude that is not known thoroughly by every man who could bid on that sort of work, so that the lavish distribution of extra copies of the specifications which you speak of would simply be the means of getting them into the hands of people who might come down as blackmailers on legitimate contractors, which could not help the United States in any manner whatever.

Col. Gillespie: If that be true, then advertising is unnecessary?

Capt. Carter: That is to give notice of the exact time when the bids are open and to give a man an opportunity to bid on the specifications, but there is no question but that any man who is able to bid on a big piece of work like that knows all about that work.

Capt. Gillette: I notice that you sent a letter with each of these first copies requesting its return. How do you estimate the cost of the clerical work used in writing one of those letters compared with the expense of a printed copy of the specifications?

777 Capt. Carter: I have not figured that out.

Capt. Gillette: I would like to invite the attention of the Board to this blue print submitted by Capt. Carter. That the sanding up shown by Mr. Twiggs doubtless existed as he shows it there—in fact, he told me so; but you will notice there is no vertical scale on that. He indicates the mattress as sanded up to its full height, but he does not show that the height had shrunk to almost nothing as his reports to me indicate.

Capt. Carter: His reports indicate to me there was no compression of the mattresses and this report showing as he does

here the bottom and top layer of 100 feet and 80 feet, indicates conclusively that he did not consider that such shrinking as Capt. Gillette speaks of had taken place, otherwise he would have represented it in a different manner. I know in all his statements to me he distinctly stated what I have stated to the Board before.

Col. Gillespie: Can you show any official statement of that kind?

Capt. Carter: I have explained that in Savannah it was my custom to visit my works very often to give instructions and receive reports from the assistants by oral ques-
778 tioning, and I don't know whether I have any statement of that kind in writing. At that time I supposed Mr. Twiggs to be a man of integrity and to be a man who would state afterwards what he had stated to me and if I had expected that my assistants were men who would have made a series of statements in writing and similar statements to me orally, and then afterwards try to get out of them by a flimsy and scandalous excuse, I think I would have taken upon myself the opportunity to protect myself; but I am not built that way and it didn't occur to me that every man I met was a scoundrel.

Col. Gillespie: Did you consult these gentlemen yourself?

Capt. Carter: I did; but I did not believe they were scoundrels until after they had come under Capt. Gillette's influence, and I believed that what they said was true, and that they never meant then what they state now they did, because somewhere, with somebody in conversation they would have said something which would have leaked out and it would have come to somebody's knowledge.

Capt. Gillette: Is it possible to account for the peculiarity of Twiggs' report on the supposition that he reported what he thought you wanted reported?

779 Capt. Carter: I think that any man who states that he would report what another man wanted reported, is a man unworthy of any belief whatever. I had asked him so often about that matter and I had gone over it so thoroughly, that I wanted further confirmation as to how these were standing, and if there had been any departure it was his duty to have reported it to me, and I expected that he would. He does not report anything to me at all about shrinking or any change from the satisfactory condition in

which the mattresses were when I saw them, and it was reported to me.

Adjourned to October 19, 1897, at 10:00 A. M.

Adjourned to October 20, 1897, at 10:30 A. M.

780 New York, October 20, 1897.

Pursuant to adjournment parties met.

Present same as before.

The Board was called to order when the following proceedings were had.

Captain Carter: I have a letter from Mr. Westcott which I submit, and also a letter from Messrs. Reed & Flagg.

Colonel Gillespie: There is evidence, Captain Carter, that you have had several powers of attorney from Mr. Westcott authorizing you to represent him in business matters involving the use of large sums of money. As you have been charged with being engaged in certain irregularities by which it is alleged the Government has suffered enormous losses of money, the Board has deemed it proper to investigate these transactions. Now is Mr. Westcott thinks you faultless in this matter, it is not only his right, but it is his bounden duty to appear before the Board and exonerate you. His failure to appear under the circumstances gives color to the charge under which you suffer.

Captain Carter: I have asked Mr. Westcott again and again and his statement to me is that that account which you have asked for relates to other people, and I infer from that that did it not relate to other people he would have no objection whatever to furnishing it; surely I have none.

781 He states that what I did as to that account I did for him and under his power of attorney, and I presume that Mr. Westcott feels that as it was for him only and under those powers of attorney I acted, it could not possibly have anything to do with my official actions.

Colonel Gillespie: He doesn't properly state the case when he says that there accounts have been presented before for the reason that that portion of your account which we think is pertinent to the case we have not got.

Captain Carter: I am powerless in this matter. I don't know what to do. I should like to do it and I have exhausted every effort but the trouble appears to be that this account contains in it things which I know nothing of and which concern other people, and that is the reason I suppose why Mr. Westcott doesn't feel like giving that account.

Major Raymond: Will you state what other people?

Captain Carter: That I don't know. He is a man of large business connections and I don't know what other people, but he says as to that account what I have done in it was for him and under his power of attorney—in other words, none of that account was mine and I only acted for him as attorney.

Colonel Gillespie: Then Mr. Westcott in justice to you and in justice to himself should come here to exonerate you and explain that account.

Captain Carter: He says he has relations with his
782 other children and with other people and that he owes a duty to them, and I don't know what to do.

Colonel Gillespie: All right.

Captain Carter: Of course you understand this that he is an old man and he has other people with whom he has dealings as well as myself. I can't conceive how there can be any reason, because so far as I am concerned there is nothing in the world I would not like to have done. I have done everything I could do, and I of course know nothing about these private affairs of Mr. Westcott. I only knew what I had to do.

Colonel Gillespie: Have you your written statement here today?

Captain Carter: I have it almost finished. It is typewritten, and there is a small portion yet that I have not finished, but I was so tired last night that I had to go to bed, knowing that I would have to be here today, but it will take me not more than two or three hours to finish it.

Colonel Gillespie: The Board has now patiently heard you for a month and it is proposed to close this case today. We will hear Captain Greene.

Captain Carter: Can I submit a few other things?

Colonel Gillespie: Yes, but I hope before the day closes you will present the case again to Mr. Westcott: There is
no disposition on the part of any of the members of the
783 Board or any person outside of the Board to get at the private matters of Mr. Westcott. What we want to get at and what the Board will insist upon getting at is Mr. Westcott's account relating to your account, which can only be done by an inspection of Mr. Westcott's account. As we have asked for it repeatedly from Messrs. Reed & Flagg and have asked for it several times before I ask it again more especially in your behalf.

Captain Carter: I have asked for it in my behalf and have pressed it earnestly upon Mr. Westcott, but he says to me that these are mine and I acted solely and only for him.

Colonel Gillespie: What year does that relate to?

Captain Carter: To all the time I have been acting for him since 1891.

Colonel Gillespie: I should suggest that you make another attempt to have this authority granted.

Captain Carter: I have explained to him the feeling of the Board, but Mr. Westcott feels, as I stated, that these were his personal matters and not mine.

Colonel Gillespie: The answer to it all is that the Board does not deem that satisfactory. We have duties to perform and they must be performed and we cannot slight them.

Major Adams: Has his attention been called to the fact that checks drawn by Captain Carter as attorney for Mr. Westcott are not included in the statement furnished?

784 Captain Carter: I know that, and I went to Reed & Flagg to get those accounts, and they told me that they could not separate them from Mr. Westcott's account because the books did not afford any means of telling which were his, which were done by him individually or through attorneys, or which were done by me, and they stated to me that it was only fair to me to give me what I did, and that if I could tell them what those were they would do it, but they did not feel at liberty to exhibit Mr. Westcott's private transactions that I had nothing to do with as they would not be able to pick them out. If I had kept a list of what work I did for him then I could go to them and explain it to them before hand, but I did not keep such a list. I just put them into Mr. Westcott's books and there was no record kept further than that.

Major Adams: Your own check book shows that.

Captain Carter: Could I have a statement from them I could prove to you conclusively and I think they would give me everything that I could show to them because that would be conclusive to them that I was acting as Mr. Westcott's attorney instead of for somebody else.

Major Adams: It is not complete at all for this reason that you have cancelled checks drawn in favor of Reed & Flagg and indorsed by Reed & Flagg.

785 Captain Carter: I know that, but they said these things being done for Mr. Westcott they had no means of telling, so if I could get those checks I could say on

such and such a day I gave you this, then they ought to be able to tell the transactions which I had with him.

Major Adams: These are drawn exactly in the same way as the others are drawn.

Captain Carter: As they said the others were no more mine than these; it was simply put in there for transfer.

The Board here went into executive session, after which the following took place.

BENJAMIN D. GREENE called:

By Colonel Gillespie:

Q During the course of the investigation of the offense with with which Captain Carter is charged your name has come up occasionally and the Board would like to ask you a few questions. Have you ever rendered any business service for Captain Carter for which you have received money as compensation?

A I have not. I don't understand the question exactly, have I rendered a service for Captain Carter?

Q Any business service for Captain Carter for which you have received monied compensation?

A I have not; certainly not.

Q Has he ever rendered you any business service for 786 which he has received monied compensation?

A He has not.

Q Have you ever been engaged with Captain Carter in any enterprise from which you have mutually profited?

A Never.

Q Have you ever been interested in any of the Government contracts for the improvement of Savannah River, Cumberland Sound or any other river or harbor under Captain Carter?

A I have.

Q Have you ever shared with Captain Carter any of the profits arising from those contracts?

A I have not.

Q Have you ever placed in the hands of any person or in any bank, moneys designed for the use or benefit of Captain Carter?

A I have not.

Q Have you ever made any investments for the benefit of Captain Carter?

A I have not.

Q Have you ever bought any stocks, bonds or made any loans to Captain Carter?

A Made loans for him or to him?

Q For him.

A I have not.

Q Have you ever made any loans to him?

A I think I loaned him some money a number of years ago, or to his brother at his request. At the time, however, I had no contracts with the Government. The loan was paid not long after. I don't remember much about it.

Q Have you ever had any business relations with Cap-
787 tain Carter which placed you under any obligation to him or placed him under any obligation to you?

A None whatever.

Q Do you know of any person having an interest in these contracts who has ever given to Captain Carter for his use or benefit any money derived from these contracts?

A I do not.

Q Do you know of any person having any interest in these contracts who has placed in a bank or in the hands of a third person for the use or benefit of Captain Carter any funds or investments?

A I do not.

Q Do you believe that Captain Carter has ever derived any personal profit from any of these contracts?

A I do not.

Q Has R. F. Westcott, within your knowledge, ever derived any profit from any Government contract in which you were interested?

A He has not nor from any other contract in which I have been interested and there were a good many besides Government contracts. There are other contracts which I have executed, but neither Captain Carter or Mr. Westcott ever derived any benefit from those.

Q Do you know whether Mr. Westcott has ever invested any money in the execution of Government contracts in which you have been interested?

A He has not.

Q Has Mr. Westcott, within your knowledge, ever made any investment for the interest or profit of Captain Carter?

788 A I don't know anything about it.

By Captain Carter: Q I would like to ask you, Mr.

Greene, whether there has been anything in our lives that you know of except such relations as could properly exist between honorable gentlemen?

A In my opinion, no.

Q Have you ever known me in any way to do anything which you did not consider an honorable gentleman should do?

A I have not. May I be permitted to say something?

Colonel Gillespie: I don't think the Board cares to hear anything except what they have inquired about.

Major Raymond: Do you think it pertinent to the case?

Mr. Greene: I think it is decidedly so.

Major Raymond: I would like to hear it if Colonel Gillespie has no objection?

Colonel Gillespie: All right, make any statement you think is pertinent.

Mr. Greene: I want to say that I felt very much hurt that any one either with or without the authority of the Board—I don't know how it was done—should attempt secretly to obtain any information about my bank account when I had not declined to come before the Board and had not declined to produce the bank account. I feel hurt at that.

Colonel Gillespie: Will you give a statement of your bank account; will you permit the bank in which your
789 account is to give to the Board a statement of your account in relation to these transactions?

Mr. Greene: I will not say whether I will do that or not. I may say this, however, that my bank account contains a good many private matters, but I will demonstrate to the satisfaction of the Board if Captain Carter's defense depends upon it, that neither he nor Mr. Westcott ever received a dollar of this money.

Colonel Gillespie: I now make an application for a statement of your account so far as it relates to these contracts in the American Exchange National Bank.

Mr. Greene: Your application I shall have to consider.

Col. Gillespie: I thought you felt aggrieved.

Mr. Greene: In the American Exchange National Bank; this was an attempt to get the account at the Knickerbocker Trust Company.

Col. Gillespie: I include that then. The Board makes personal application upon you now for a statement of your account with the American Exchange National Bank, the Knickerbocker Trust Company, the Manhattan Company or

any other Company in this City so far as your relation to government contracts are concerned.

Mr. Green: I alluded to an inquiry that was made.

Col. Gillespie: How soon will you let us know whether these statements will be furnished?

790 Mr. Green: I will consider it.

Col. Gillespie: You can determine pretty soon whether you propose to do it or not.

Mr. Green: It is quite an extensive matter covering 13 or 14 years.

Col. Gillespie: The Board has asked from 1891 to 1897 inclusive. We are prepared, Capt. Carter, for your written statement, and you can read so much of it as you have completed, or we will give you an hour or so more delay so that you can prepare it. The case is now closed.

Capt. Carter: May I put in any more papers?

Col. Gillespie: You can put in any papers you chose. I think, however, the matter has been canvassed very thoroughly, enough for our investigation. However, any papers you want to add to those already submitted will be considered by the Board.

Capt. Carter: There is one thing which Capt. Gillette said the other day that I wish to refer to and that is his statement with reference to that juror.

Col. Gillespie: We have given three or four hours to that juror already.

Capt. Carter: I want to state this that Capt. Gillette was instructed to use every honest effort to find out and give me the name, and I want to call upon the board and state that he has not done so.

791 Col. Gillespie: He has already made a statement to the Board officially.

Capt. Gillette: I stated that to the best of my memory he was a man who was the foreman of that jury, and my impression was that his name was Logan, although I could not tell.

Capt. Carter: I have sworn statements here from the jurors in the case charging that Capt. Gillette approached them to ascertain something about me.

Col. Gillespie: All right; put that on record.

Maj. Adams: Does that include all the jurors in the case?

Capt. Carter: Yes sir. I have also an estimate of the cost of brush mattresses made by Mr. George W. Brown and by Mr. R. S. Fennett, civil engineers; also a sworn statement

of Edward H. Gaynor, who was the manager at Savannah, and a sworn statement of William P. Gaynor, who was the manager of the Atlantic Contracting Company at Fernandina.

Col. Gillespie: Why did not those gentlemen appear personally; they were in the city of New York?

Capt. Carter: I don't know why; I asked them. I also have a statement from the President of the Atlantic Contracting Company, and a letter transmitting one other statement which I obtained in reply to the letter of the 11th, a statement of Flatchek & Company. I also would like to produce certified copies from the annual reports of the Board of Trade and of the Cotton Exchange of the City of Savannah, showing the feeling of these people in Savannah concerning the work which has been done there; then there is an affidavit of Mr. Hathaway's which I have been told was sent to me but which I have not yet received. I would like to submit that when I get it.

Col. Gillespie: Any papers you have to submit will be received. The case is now closed.

Capt. Carter: Is there anything else which Capt. Gillette has to put in the case?

Capt. Gillette: Nothing more to go into the case.

Maj. Adams: As to that statement that there is nothing more to go into the case, of course, the Board is still in session and making an investigation. In my opinion, it is not barred from making any further investigation that we may desire.

Capt. Carter: What I had reference to was this, that Capt. Gillette said the other day he had some other things here and before making my final statement I would like to have everything appear in the case, so that I could the more intelligently answer any charges that might be made.

Col. Gillespie: What is it that you have reference to?

793 Capt. Carter: I don't know what it is. He stated the other day that there were a few papers which he had not put in, and what I thought was this that if I were to make a final statement, it was no more than fair that I should have everything, because I don't see how I can make a final statement which would be a final statement unless I can have everything.

Maj. Adams: Here is a check No. 27, to the order of Reed & Flagg, for $666.50, R. F. Westcott, O. N. Carter, bearing date April 9, 1895. The check is endorsed Reed & Flagg, by

Franklin Ford; also a check No. 29, dated April 10, 1895, to the order of Reed & Flagg, for $6,956.28, endorsed by Reed & Flagg, by Franklin Ford. Those checks are not accounted for in the statement, which was certified to be a complete statement of all transactions by you individually or otherwise, from 1891 down to 1897.

Capt. Carter: I suppose the reason of that is, that the checks are cashed on the book-keeper, and I suppose they have no record of the checks, but now that I have it, I can go there and get it from them, I feel sure, because I asked them and they told me there was no way of discriminating, because cash was cash, and it might be either in money or in checks.

794 Maj. Adams: In other words, their certificate is false?

Capt. Carter: I don't think that. It is everything, so far as they are able to determine by their checks; everything they have, because they told me so, that it was everything they had, and Mr. Ford made the statement—he says, "We know that is Mr. Westcott's, because he came in with these same things and sold them"—I mean that stock. Those were the only things I had put in my name. Is there anything else, because if there is, I would like to know. They can't tell what a thing is, but I believe if I could make the statement that that was not mine on that day, they would be willing to accept my statement even though the books didn't say anything about it.

Col. Gillespie: The Board is surprised that five checks all drawn and endorsed alike should not receive equal consideration—in other words, there is a statement with reference to three of them which has been received, and with reference to two of them which has been declined.

Capt. It is this: That when I bought stock I had it put in my name under this power of attorney for facility of transfer, so that, although it was Mr. Westcott's my name was on the back, and of course, going down to him and

795 going into his securities, it did not appear on their books in that way.

Col. Gillespie: You are now referring to April?

Capt. Carter: Yes, referring to the same thing.

Col. Gillespie: Now, the next thing in order is the presentation of your written statement, and with a view to enabling you to have time to prepare it, we will now adjourn until Saturday morning, at half past ten o'clock.

Adjourned accordingly.

796 October 25, 1897.

Present, all of the members of the Board.

MR. JOSIAH REED was examined as follows:

By Colonel Gillespie: Q We are endeavoring to get some enlightment upon the matter of Captain Carter, which we have been directed to investigate. On the 16th of October I addressed you a letter in which I make the statement that the Carter account is received. In looking over it I find it is not a complete account, as the transactions for April, 1895, are not included in the statement furnished. I addressed you a second letter on the 19th of October as follows: "When may I expect the statement of Carter's account, for which an application was made yesterday?" You have since replied that you were unable to furnish any additional information on the ground that it was Mr. Westcott's account and not Captain Carter's. Now, Mr. Reed, if you will reflect a moment and take the correspondence in that case you will appreciate that that account is Captain Carter's. Mr. Westcott's name is not mentioned in it. The letter of May 29, 1895 is signed by Captain Carter in his individual capacity and your reply is addressed in the same capacity. What the Board asks and what it has a right to demand is a state-
797 ment of that account. You will understand that we are an investigating board appointed by the authority of the Secretary of War and you must understand that the revised statutes which refer to the improper use of public money by disbursing officers are very positive, and the Board hopes that you will recognize the fact that this account is essential to our investigation and will give it to us if you can. I would like to have you give me that account as asked for in my letter of October 16, 1897.

A In the first place let me explain. When your first letter reached my office it was after I had left for the day and I received it simultaneously with the second letter. I presume, Colonel Gillespie, you appreciate the position I am placed in by having been restricted formally by Mr. Westcott, or rather enjoined, not to furnish his private account to anybody. I wish that I might speak to you gentlemen informally a little while simply to have you informed of the circumstances which led up to this business. It seems to me that you would then understand me better. It is not testi-

mony or it is not in answer to your question, but as I say, what led up to the business. If you have no objection I should be glad to do that.

Q Has the Board any objection to it?

(There was no objection)

A I have been acquainted with Robert F. Westcott since 1860, 59 or 60; during the last 15 or 20 years very intimately.

There could be no greater intimacy between any two
798 families than existed between mine and his. I think I may say I was his confidential friend. When Captain Carter married Miss Westcott, my granddaughter, who has always lived with me, was bridesmaid. From that time onward Westcott always spoke to me of Captain Carter as his son for whom he had great admiration and in whom he had unlimited confidence. That confidence was expressed by some business which was done by Captain Carter acting merely as a messenger as it were or representative prior to 1895 when Mr. Westcott was abroad. To confirm what I say about intimacy, Mr. Westcott urged me to go with him abroad. I could not go. Mr. Westcott then informed me that he wished Captain Carter to represent him during his absence and expressed to me and to my firm unbounded confidence in Captain Carter's loyalty to him, his integrity, and stated that he would do everything for him as if he were here himself. Now those facts that I have just stated indicate to you how the relations existed between myself and Mr. Westcott and Captain Carter as his representative.

Now, then, the business of my firm that was transacted with Captain Carter was always considered by my firm as Mr. Westcott's business. He was always considered simply as Mr. Westcott's representative. I ask your indulgence because I want to give you thoughts that occur to myself. Suppose Captain Carter had been Mr. Westcott's own son, I could not have looked upon him more as a representative of Mr. Westcott than I did. Therefore, this is the explanation —it may not be an excuse—for addressing Captain Carter a letter without addressing him as the attorney for Mr. Westcott. Whenever that was done, it was done simp-
799 ly on the ground of confidence, and that it was perfectly understood between my firm and him that he was the representative of Mr. Westcott. I never did from the first to the last any business with Captain Carter that I did not understand to be as the representative of his father-in-law, Robert F. Westcott, from the beginning to the end. Now in

the first place when you ask, Colonel Gillespie, for a statement of the account which we did not furnish, I had not then any instructions from Mr. Westcott, but I immediately wrote to him asking consent from him to respond to your letter, and I received through his attorney positive instructions not to do it. You will please to consider then my very embarrassed position. Now I want to say further that it would give me the utmost pleasure to answer all your questions. There is nothing I desire so much as to be permitted to do just that, but I beg your consideration of my being restricted from doing that. Now I can explain, if you wish me to do so, some facts connected with this account of Captain Carters which you have already had which are not included in the restrictions of Mr. Westcott, as I appreciate them. I think my cashier, Mr. Ford, was asked by you whether Captain Carter ever paid for any securities in cash, or in part cash.

Major Adams: I asked that.

A I understand from Mr. Ford that he replied that 800 he thought he had; then he was asked whether Mr. Westcott ever did that; and that he replied he thought he had. Now, such is the fact, that Captain Carter did pay for those stocks in currency. I have no hesitation in stating that as a fact.

Colonel Gillespie: Q What stocks do you mean? The Delaware, Lackawanna & Western?

A 400 of the Delaware, Lackawanna & Western and 200 of the Delaware & Hudson. I have not gone into the files to see the deposit slips at the bank. I speak from recollection.

Q Is that an unusual transaction?

A Well, not in that connection. It is rather unusual as current business.

Q Where did Captain Carter get that currency?

A Oh, I do not know, sir.

Q Why should it not be an unusual transaction in that case?

A Well, in the course of years of business selling securities and receiving pay for them, it is not very common. It is only occasionally that they are paid for in that way.

Q Do you remember how much was paid in currency?

A That particular transaction?

Q Yes.

A Not definitely; I would not like to say positively; my recollection is something like $30,000.

Q In currency?

A Yes.

Q Was that the largest amount of currency that Cap-
801 tain Carter ever paid in to you at any time?

A Well, I should think it was, as near as I can remember.

Q Will you give the Board a statement of the separate deposits received from Captain Carter and made by you, from the deposit slips, in the Bank of America during the months of April, May, June, July and August, 1895? deposits that Captain Carter made with you and which you afterwards made in the Bank of America?

A Those go into the Bank and we have not applied for them.

Q Would you apply for them for the Board?

A I will do so with pleasure.

Q I mean a detailed statement of the separate deposits received from Captain Carter and deposited by you. When may we expect it?

A I don't believe I could get it before tomorrow. These slips are filed away so that the banks may have a good deal of trouble in finding them.

Q I want to find out whether it was deposited by checks or by currency. The deposit slips will show.

Witness: My cashier was asked, as I understand it, by your Board a few days ago, whether Mr. Westcott ever had done that same thing in the payment for securities bought of Reed & Flagg. He said he had.

Q Was that frequently?

A Well, repeatedly; more than once.

Q More of late years than formerly?

802 A Oh, I don't remember of his ever having done it formerly. Right here you have asked, if you will allow me, for an account of Mr. Westcott beginning in 1891, 1892 and so on. We have no account with Mr. Westcott in either of 1891 or 1892.

Colonel Gillespie: Captain Carter's power of attorney ran back that far and that is why we asked for it, but we will be satisfied with the 1895 account. Where did Mr. Westcott get that currency?

A I don't know.

Q Was that an unusual transaction?
A Well, it is rather unusual, but not at all isolated.
Q He had a bank account, did he not?
A Well, I don't know, sir; I could not say.
Q Did you ever receive a check from Mr. Westcott?
A Oh, yes.
Q Do you know where those checks were drawn?
A Yes sir. I speak here from nothing more than impressions or recollection. I know that I have heard Mr. Westcott speak of having an account with the Union Trust Company.
Q Having an account with the Union Trust Company and plenty of money to draw on, would not the payment of these purchases in currency be an unusual transaction?
A Well, it is not very usual. I had a transaction lately of that very sort, not large, but small.
Q The Carter currency transactions you say were
803 pretty large, amounting to $30,000.—rather a large sum, is it not?
A Yes. (After a pause) I don't know, Colonel Gillespie, as I have anything more to say.
Q The Board thinks it strange, Mr. Reed, that all these four checks of 1895 right here (showing checks) are all drawn in identically the same way. There is "Carter, Attorney." These are the two transactions I wished you to explain as indicated in the letters of October 16 and 19, 1897. (Handing witness checks) You see the indorsement on the back of them. You have given us the transaction for October, 1895; what we want now is an explanation of the transactions for April, 1895. (Handing two checks to witness). There is no intention of delving down into Mr. Westcott's private accounts. We have part of Captain Carter's account and we want the rest of it.
A Well, the mode of payment for those stocks will appear by the deposit tickets which I propose to get.
Q Very well, will you give them to us? I will give you the dates of the deposit slips I wish. In June, 1895, you sold a certain number of United States bonds for Captain Carter amounting to about $30,000 approximately. How did you draw that check in payment to Captain Carter?
A My recollection is that it was drawn to the order of Robert F. Westcott.
Q Will you show us that check? You have it in your possession?

A I wish I was not restricted. The question now with
804 me, Colonel Gillespie, is how far I am restricted by Mr. Westcott.

Q This was a transaction between you and Captain Carter and I know the amount and I know that you drew the check to Captain Carter and I would like to see that check.

A I did not draw a check to him.

Q I would like to see that check for that $30,000.

A I admit that we have it.

Q Can I see it by calling at your office?

A Oh, I would not trouble you to do that, sir, if I was not restricted. I would bring it here if I were free to do so.

Major Adams: (To Colonel Gillespie) I suggest that you explain to Mr. Reed how that account appears along there in the books (indicating on the check stubs). He was acting as attorney and it also carries Captain Carter's private funds. (Addressing witness) What we want to show you is that we do not care anything about Mr. Westcott's accounts in the least, but we do want to know about these transactions by Captain Carter. To show you (pointing to stubs), here is a check book, "R. F. Westcott," "O. M. Carter, Attorney." This is Union Trust Company. We have been all over these with Captain Carter and we find that he frequently makes deposits of his own money, what he admits is his own money, to the credit of Mr. Westcott, so that makes this a mixed business; part of it is Carter and part of it is Westcott. Now, for instance, right here (pointing to stubs) is
money received from Carter. He says "From O. M.
805 Carter, $144.84." Now that was a check drawn by Carter himself and deposited to the credit of Westcott. It was not Westcott's money; it was Carter's money and Carter admits it. And so on all the way through here, that much (indicating) belongs to Westcott, and that much belongs to Carter, and he admits it. Again, you see, these are Carter's figures (indicating), and again here; again there; and here there is one from "O. M. C."; and here Carter has more than half of it. Now, it is this Carter part that we are after. This (pointing) is R. F. Westcott. This "O. M. Carter, Attorney." We would like to get the Carter part separated from the Westcott part. Can you give us the part where he brings in bills for deposit?

A Well, so far as that account is concerned, we have rendered a copy of it to you.

Q If Carter brings you say $10,000 in bills, can't you give us a record of that?

A Well, so far as the account goes, but you see, if I go over the line into Westcott's business, how I immediately violate instructions.

Q Well, here again—

A You want to get at the truth, and so do I.

Q You see this notation here? It is first "A" and then "B." That "A" is Carter and it is $27,000, and "B" is Westcott, and it is only $117. But still, that is R. F. Westcott too—"O. M. Carter, Attorney." This (indicating) we have got separated. Can't we separate yours too? A thing 806 you know is Westcott's we don't want. What we want is Carters'. Where Carter brings in bills and deposits them, we would like to know about it. If Captain Carter brings in say $30,000. in cash and makes a purchase and he has that purchase transferred to him, for instance of stock purchased in his own name, don't that look more like representing a transaction by Carter than one by Westcott?

A No, not if you take the preliminaries into consideration and also the after occurrences into consideration.

Q What are the after occurrences?

A That stock went to Mr. Westcott to my certain knowledge.

Q When?

A I don't know when. I can only tell you what I inferred. I cannot tell you when, because I did not see it. I have seen it since.

Colonel Gillespie: You have seen it since?

A I think I have. Either I have or some one of my employes has.

Q How did you happen to see it?

A Well, I don't know but that I will have to go a little further back on that score. Because my firm attended to the transfer.

Major Adams: Have you attended to the transfer of any stocks recently?

A Not very recently.

Q In 1897, this year?

A Oh yes.

Q The same stock that we refer to?

A Yes sir. Not more than three months ago; in 1897.

Colonel Gillespie: Do you remember what particular stock was transferred?

807 A Yes sir.

Q Was it Delaware & Lackawanna or Delaware & Hudson?

A It was Delaware, Lackawanna & Hudson, so far as I know.

Q Were those registered bonds that you bought in April, 1895?—Government bonds?

A No sir.

Q Delaware & Hudson?

A I think not.

Q Any registered bonds?

A I think not.

Q Delaware & Hudson, Pennsylvania Division? They were 7%?

A No sir.

Q You also had some Delaware & Lackawanna 6%. Those are coupon bonds?

A I think so.

Q To whom did you give those bonds?

A I cannot tell you here. I don't remember.

Q Well then, you will give us that transaction of April, 1895, to complete this Carter transaction, including those bonds which I asked for October 16, 1897?

A This is just what you already have.

Q That is only for one month. This is October, 1895.

A I would like to take into consideration your request, but I beg you all the time to consider my position.

Q I do that. You are in no way responsible for these transactions, Mr. Reed. You are in no way endangered

808 at all. I may say that there is no fear that you are going to be called into account for any money consideration at all. There is not at all a particle of danger that way. All we want to do is to clear up this Carter transaction and if he is innocent exonerate him.

A I am interested just as much as you are. I have never had from the first to this moment a doubt about the integrity of Captain Carter and I am therefore extremely desirous of having everything cleared up; that is, aside from the testimony. Please give me time to think about the other matter. I will send you the deposit ticket, or a copy of it, as soon as I can.

Major Raymond: Do you think that Mr. Westcott might be persuaded to let you give this informtaion, considering it is so much to the interest of Captain Carter?

A No, I could not say. I wrote for his permission but he refused it.

Colonel Gillespie: I should think he would want to exonerate him.

Q You ask a question I cannot answer. I can't understand it. If I could see Mr. Westcott I should ask him as a personal favor to me to let me answer every question that you wanted to ask. He is not here. I have written him and I have told you his answer and can't tell you any further than that. I cannot imagine any reason for it.

Major Adams: Well, if all these transactions were made with Mr. Westcott's money, as he represents and as you represent, why not verify them?

A Well, it does seem to me that Mr. Westcott's men
809 could answer all these questions. We simply act as his bankers or brokers and he enjoins us emphatically and formally not to furnish the information.

Major Adams: Colonel, can't you further request of Mr. Reed that he give us the deposit slips for the cash received, I mean the bills received from Captain Carter?

Colonel Gillespie: This is what I intended to make a request for in that second letter. (Reading from letter of October 16, 1897, to Messrs. Reed & Flagg:

"May I ask you to revise the statement you have made and make it include the transactions to which I refer or any others previously omitted?"

What we want is this: The first thing is the debit and credit transactions of April, 1895, for Captain Carter to be taken from the books, because there is a transaction there that is not complete so far as the information is concerned that we have here, and in the interest of Captain Carter it should be made complete, just as you have made it complete for October. Then comes the detailed statement of separate deposits received from Captain Carter and made by you in the Bank of America during the months of April, May, June, July and August, 1895. And also the original check of June 7, 1895, for $30,828.25 drawn by you in the name of O. M. Carter, O. M. Carter, Attorney, or R. F. Westcott.

A You see, Colonel Gillespie, that is Westcott business on our books.

Q We don't conceive it so because it is not separated
810 on that book (pointing to stubs of checks); and even if it were, it is necessary for us to have it in order to exonerate Captain Carter.

A Well, I appreciate that too.

Q If Mr. Westcott believes Captain Carter blameless and faultless in this matter, he ought to be only too happy to furnish this account.

A This is very unpleasant for me.

Q There is nothing in it that we like either, but we have a duty to perform and we must perform it.

A You know, Colonel Gillespie, there is a difference between being called upon as a witness in a court and being called upon without being a witness in a court. You see how I am tied up. I have to ask you continually to appreciate that position.

Q But we don't see the reason for your being tied up.

A But I have written Mr. Westcott for permission to testify.

Q But Mr. Westcott has no right to prevent your exhibiting to us, a duly authorized Board, the accounts of Captain Carter, and that is what we ask, and nothing more.

A Well, we have furnished the account of Captain Carter.

Q Not as the records show it ought to have stood on your books. How you put it on your books is another thing, but it is clearly shown here by the check book that it is in the name of Captain Carter. The check is drawn by Captain Carter, and on one of the checks you will find that he even does not go to the extent of signing it as attorney. It is simply endorsed "Carter"—one of these very checks I showed you.

811 (Checks again exhibited)

That is drawn there by "Attorney." He does not attach much importance to attorney ship, for he did not put that one (pointing) "attorney" and yet you accepted it.

Major Adams: In this account, where he is acting for Mr. Westcott, $27.187 belonged to Captain Carter. That is, this "A" means Carter; and in it $117.61 belonged to "B", and he says that that was Westcott.

A That is June 27.

Colonel Gillespie: Yes sir, 1895.

Major Adams: What we seek is to separate the Carter from the Westcott in the purchases made through your firm.

A Yes, Captain Carter as the representative of Robert F. Westcott comes in and buys for Robert F. Westcott certain securities. Now Reed & Flagg have no question about their being for Robert F. Westcott. Therefore we keep an account with him.

Q Did you have in your possession a power of attorney from Mr. Westcott?

A No.

Q Then you were unable to know, you had no personal knowledge that Captain Carter was trading for Mr. Westcott.

A Oh well, I think I had a knowledge. When a man introduces his son to me and says "He will do my business," there is no question about it at all. We had no reason to question it. There was no doubt about it in our minds. Captain Carter comes in and discusses various securities,
812 raised the question—asked me perhaps, whether I think those stocks are in accord with Mr. Westcott's views. I said I have no doubt, I have known them for years; they are all right.

Major Adams: Mr. Reed, did you recommend the purchase of the stock?

A No sir, I did not. I never recommend the purchase of stock. I never dealt in stock—did not make one cent on their whole transactions, not one farthing. We are not members of the Stock Exchange.

Q When the stock was purchased, was it transferred to Mr. Westcott or to Captain Carter?

A The stocks were I think transferred to Captain Carter. Now, if you want me to tell the reason why—

Q Yes sir, tell us about it.

A Well, I can give you the reason given us as a firm, when Mr. Westcott was abroad. Previous to the purchase of those stocks there had been an investment of a considerable sum of money which had been anticipated when Captain Carter was here and we conferred, that is myself or my partner, as to the investment in advance and he indicated certain securities he would like to get. In fact, he gave us a discretionary order to buy those, as we understood from Mr. Westcott. We could not find them within the limits. Now the reason given, as I understand it, for opening that account with O. M. Carter was that Mr. Westcott being abroad, it might be found desirable to sell those stocks, as I understood it from the correspondence with Mr. Westcott by Captain Carter.
813 I had this in mind: that he was going to report to Mr. Westcott what he had done and that Mr. Westcott might order them sold. Mr. Westcott was not here to sell them. We could not sell them if they had been turned over to him. This is the whole story.

Q If he, Captain Carter, had a power of attorney, which he stated he was acting under, he could do it?

A Well, I suppose so.

Major Adams: Did you understand that Mr. Westcott directed the purchase of stock?

A Oh no, he was not here to do it. He did not direct it so far as I know. I don't think he did.

Colonel Gillespie: You say that Captain Carter had under consideration the investment of a large sum of money?

A Well, a considerable sum of money.

Q How did that come?

A Oh, I don't know. I understood it to be Mr. Westcott's money. I never had any doubt about it.

Q Well then, if you will give us the debit and credit transactions of April, 1895, (by) Captain Carter, and a detailed statement of the separate deposits received from Captain Carter and made by you in the Bank of Commerce or any other bank during the months of April, May, June, July and August, 1895, and also show us the original check dated June 7, 1895, for $30,828.25 drawn by you in the name of O. M. Carter, O. M. Carter, Attorney, or R. F. Westcott, that will be all we will ask.

814 A Now a further embarrassment comes in here; Mr. Westcott's attorney has gone out of town. I cannot see him.

Q How soon will he be back, Mr. Reed?

A I went to see him this morning and they said he had gone to Seattle, Washington.

Q Who is his attorney?

A Mr. Thatcher.

Q Has he no representative here?

A No, I believe not.

Q Can't he give the power of attorney to somebody?

A I think not.

Major Adams: We understand that this is not a case of any power of attorney being necessary. It is simply a transaction by Captain Carter, a transaction with which Mr. Westcott's attorney has nothing whatever to do. It is a perfectly plain case that it is Captain Carter and nobody else.

A Well, it is not so plain to us, because we have our account with Mr. Westcott.

Q Does not that book (pointing to check book) now change your opinion? Do not the separate divisions in that account

as shown in that book lead you to change your opinion now in regard to that?

A Well, I don't see how I can change my opinion. I don't know how that book comes between me and my books.

Q Mr. Reed, when Mr. Westcott was absent in Europe and Captain Carter brought in large sums in bills to make
815 purchases, did you suppose that money belonged to Mr. Westcott.

A I never had any doubt about it and I don't see why I should have doubted it, when Mr. Westcott had done the same thing before he went away. It is perfectly clear to me.

Colonel Gillespie: What is Mr. Westcott estimated to be worth?

A Oh, I don't know.

Q Have you ever heard any one say?

A No sir.

Q What do you suppose yourself?

A Mr. Westcott is a reticent man; he does not talk about his financial affairs.

Major Raymond: I would like to ask Mr. Reed this, speaking of Captain Carter's depositing this money in currency while Mr. Westcott was in Europe and he believed that it was Mr. Westcott's money. Are there ways in which money in that form could come into Captain Carter's hands, being Mr. Westcott's money, properly? I mean, could he have received it as rents or something of that sort as an agent? I am trying to clear up my mind as to how such sums of currency could come into Captain Carter's hands, he being the representative of Mr. Westcott and Mr. Westcott being abroad?

A I should say that might be easily accounted for, just as easily as accounting for it as when Mr. Westcott had it himself.

Major Adams: When did Mr. Westcott first begin making purchases in that way with you, by cash or in currency?

A Some time ago; I think it must have been in the panic of 1893.

816 Colonel Gillespie: What month was the panic?

A Oh, I will never forget that month. It was August, 1893. Colonel Gillespie, you will please to understand that I have the greatest respect for this commission and I will do all I can consistently with my sense of duty to others, weighing of course the duty to others, to assist it in its labors.

MR. TOWNSEND, representing Mr. Robert Maclay, President of the Knickerbocker Trust Company, appeared before the Board and was examined as follows:

Colonel Gillespie: When will Mr. Maclay be back?

A I think he will be back tomorrow. He had to go out of town this afternoon. He sent me to find out what you wanted to see him about.

Q We want Mr. Maclay to come down and give the Board some information in regard to certain Government checks that passed through his bank. That is all we want.

A Well, now, of course the relations of the Trust Company with its clients are confidential.

Q We understand that; but this is Government money and we are following it up and we have gotten it to your bank and now we believe that Mr. Maclay has it in his power to clear the way for the exoneration of the man who drew those checks and we would like to have him come here with that object in view, of giving us information about those 817 checks.

A Of course any request of yours will be considered, Colonel, and as I say, he will probably be here tomorrow. He is a man of very many engagements.

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818 October 26, 1897.

The Board met pursuant to adjournment. All the members present, also Captain Gillette and Captain Carter.

BRIG. GENERAL WILLIAM P. CRAIGHILL, Retired Chief Corps of Engineers, U. S. Army, appeared before the Board and was examined as follows:

Colonel Gillespie: General, you have been called in the case of the investigation of Captain Carter's works and were called at the request of Captain Carter. Do you care to have the charges read to you?

A I don't think it is necessary.

Q General, during what years, were you Division Engineer of the Southeast Division?

A I recollect when I ceased to be Division Engineer; it

was the 10th of March, 1895; but when I began I don't recollect. The records of course would show.

Q Did it go back as far as 1890?

A I can't say without examining the records.

Q Was it the 10th of March or the 10th of May that you ceased to be Division Engineer?

A The 10th of May. I have no doubt I was Division Engineer during the whole of General Casey's administration.

I don't recollect the date I began. Major Adams ought
819 to know better about that. I think he signed the order by which I became Division Engineer.

Q Your district included the engineer district over which Captain Carter had charge?

A Yes sir.

By Captain Carter: General, I don't want to bother you and yet there are a few things that I do want to ask you. I don't know whether you remember the details of my work down there or not, but I want to ask you especially whether you remember seeing me build some mattresses one on top of another in order to save the compression that I got by putting the stone on each individual layer, and then sinking those mattresses off from a barge by putting stone on top of them?

A I don't remember that particular detail, Captain, and the only mattress I remember with definiteness is one that I saw at Fernandina. I recollect that mattress because I was there with Mr. Blanchard, who was Chairman of the River and Harbor Committee, and while I have no doubt of seeing a mattress being launched while I was down there, I don't recollect any one with definiteness except that particular one, and I remember that because Mr. Blanchard was with us. I remember he claimbed on top of the mattress and you went through the explanation of the construction of the mattress with him.

Q Where was that?

A That was at Fernandina.

Q Do you remember the same thing at Savannah, or do you not?

A I do not. What I mean to say is this: I do not recollect my attention ever being directed to any of the mat-
820 tresses. I cannot remember that I ever saw a mattress put in position on the Savannah River nor on the Cumberland Sound work. I have a general remembrance that I have seen the mattresses on the Savannah River on the scows going to the work, but as to their being put in position or

not and as to their particular construction, I do not remember. But this mattress of which I speak at Fernandina I remember because Mr. Blanchard was with us and he climbed on top of it. We had some jokes about it and I remember them and about the snake stories that were told and all those things and that you and he got on top of the mattress and made a detailed examination of it.

Q It was 4 or 6 mattresses on top of one another and I explained to him why I built it that way. Now when I was at work in Savannah on account of the soft mud down there I found it necessary to build those mattresses in that way, and that increased the quantity of mattress and diminished the quantity of stone. I made no specific report of that to the Chief of Engineers, but stated it in my monthly report both to the Division Engineer and to the Chief of Engineers. I would like to know whether you remember anything came up concerning the necessity of my making more of a report than that?

A I don't recollect anything with reference to it. Do you mean to say whether you made any official communication to me?

Q Yes, official or otherwise.

A I don't recollect any official communications or any conversations on that subject.

Q I saw you in Washington, General, about the present Cumberland Sound work and had a talk with you about the matter.

821 A When was that?

Q I think in November. The question came up of the letting of that work and you told me of a conversation you had had with the Secretary of War concerning the prices.

A I recollect the conversation with the Secretary of War.

Q I mean so far as your recommendation of the acceptance of bids.

A I recollect the conversation I had with the Secretary of War with reference to those bids, etc., but I don't recollect the conversation which I had with you, although it very well may have taken place.

Q What I want to find out is whether you remember having stated whether those prices were in your opinion reasonable?

A What I said to the Secretary of War was this: The Secretary of War thought the prices were too high, and as I understand the matter, he had some private information

from Savannah that they might have been lower under certain circumstances which he stated and he hesitated for some days probably in reference to the matter, as he did at that time with reference to all the contracts under the continuing clause system. He hesitated too on all of them because, I am free to say, he was opposed to going on with work under those continuous contracts. At any rate, he hesitated over them all and he asked me the question what I thought about the bids, and I said, "Mr. Secretary, these are the lowest bids and they are all within the estimate, as I understand it, and my recommendation is that they be accepted because the work
822 is one that should be prosecuted without delay and it is an important work. Delay is injurious to it and in my judgment these bids should be accepted," and I think he did finally accept them and the work was prosecuted, but I don't recollect the conversation with Captain Carter on the subject to which he refers.

Q That was in your office, I think. General, you were Division Engineer for some time and I think you have had an opportunity of forming something of an estimate of my character and I would like to have you say to this Board, if you feel like it, what your observations led you to think?

A Well, if the Board wishes me to give my opinion of Captain Carter from the official relations that we had, I as his Division Engineer and he as District Officer, I have to say this; that I was with Captain Carter a good deal and had the most favorable opinion of him, not only as to his abilities, but as to his integrity, and my opinion of him was favorable in every particular except that I thought sometimes he was hasty in his temper and perhaps injured himself more than anybody else by the exhibition of it. You see I am perfectly frank. These are the general impressions that I had of Captain Carter.

Q I am much obliged, General.

A I will say this; perhaps, that I treated Captain Carter as I would every man in whom I have perfect confidence. If I have confidence in a man—I am referring now to my duty as an inspector—when I have perfect confidence in a man I give him my confidence and treat him so in every way and
823 I think the Captain will say that I always did so and and I did then, and I am free to say I have not lost that confidence in him yet.

Colonel Gillespie: Did you at any time while you were Di-

vision Engineer have any reason to suppose that Captain Carter exceeded the quantities specified in the specifications?

A I did not.

Q Your attention was never called to that at any time?

A If it was, I think I would have remembered it. Do you mean officially or unofficially?

Q While you were in the exercise of your functions as an inspector, did it ever come to your knowledge that he was exceeding the quantitities specified?

A If it did, I don't remember it at this time. I may say to the Board that I have not examined any of the records in this case, since I ceased to be Chief of Engnieers and I have tried to forget everything as much as I could with reference to the details in that office. I don't want to burden my mind with them.

Q It has been alleged in the charges that Captain Carter frequently left his station without authority, and in his evidence, page 398, given in Savannah in answer to a question whether, in reporting his departure from Savannah by a letter signed at his office there and transmitted from his office, dated August 16th, he being absent, whether it was meant to convey the idea that he departed from his office on that particular day. He says it was not. The question was then asked him if that was meant to convey the idea that he reported that he departed from Savannah on that day. 824 He says it was not so reported. He says:

"Sometimes I would leave to attend to some business for Mr. Westcott and I would be away four or five days, and I remember speaking to the Chief of Engineers about it and I said, 'Can't I go without reporting it? and he said, "I can't give you authority,' and I said 'I am going to do it until somebody objects' and he said nothing, and I have been away from time to time without authority from my station."

Do you remember any such occurrence at that time?

Captain Carter: I want to say that this was before General Craighill became Chief of Engineers. It was when General Casey was Chief of Engineers. In view of the fact that General Casey is dead I ought not to have referred to that, but it did not occur to me at the time I was making that answer.

Colonel Gillespie: In answer to the question (reading from page 399 of the Stenographer's Minutes)—

Q Did you report in your monthly report to the Chief of Engineers, the days that you were absent without leave?

A I don't know whether I did or not, I don't believe I did.

Q If you had reported that you were absent without leave, do you suppose that you would have been called upon to explain it?

A No sir, because I always told it at Washington in coming back. I remember once Captain Black came in and said, "Look Here, I am going to call you down. You and Bixby and a lot of others have been going around without leave and I am going to call you down."

825 Do you remember any such conversation?

A I don't remember any such conversation as that between Captain Black and Captain Carter. I do recollect this; that while I was Chief of Engineers, there was an order issued with reference to officers leaving their stations without reporting their absence and things of that sort, the particular tenor of which I do not remember at this time, but it was issued because I had information that some officers of the Engineer Corps—perhaps Captain Carter was one, but I don't know with certainty whether he was one or not—had been in the habit of leaving their stations without, as it seemed to me, sufficient authority, and after consultation with Colonel Mackenzie and with Captain Black, who had particular charge of the personal reports and things of that sort, this order was formulated, the terms of which I don't remember at this moment, but it was intended to prevent officers from leaving their districts—not their stations but their districts. My recollection is that it gave the officer the privilege of going over his district but not of absenting himself from the district.

Q You never intended to convey any idea whatever that an officer could exercise the right of leaving his district without authority from you?

A No sir, I do not recollect any such thing. I think that was an improper thing to do and I am not in the habit

826 of authorizing what is not right.

Q Again, in the statement of Captain Carter, he says: "During short intervals I have been absent from my post without leave, but never secretly and never, so far as I remember, without making it known either to the Chief of Engineers personally or to some one in his office at Washington,"

Do you recollect any such conversation?

A I do not. But I do recollect a conversation I had with

Captain Carter before I became Chief of Engineers, perhaps more than one, in which he told me of an understanding that existed between himself and General Casey, while he was Chief of Engineers, in reference to the Captain's absence from his station. I recollect those conversations, and I don't know as I made any comment upon them because I knew that every officer, like myself, made his personal reports to the Chief of Engineers, in which part of it is to state the time, the dates of his absences from his station. I think those are the words, "absence from station," and I know that I myself was always exceedingly careful in doing that and I took it for granted that everybody else was as careful as I was; and as to Captain Carter's absence from his station, I knew nothing about it.

Colonel Gillespie: (Reading from Captain Carter's statement).

"It has been alleged and charged that I have sometimes absented myself from my station without leave. I frankly admit that this charge is technically true. During short in-
827 tervals I have been absent from my post without leave, but never secretly, and never, so far as I rememberr, without making it known either to the Chief of Engineers personally or to some one in his office at Washington, and I desire to state further to the Board that my absences were never clandestine, were never intended to deceive and never interfered with the proper conduct of my duties."

Are you aware of his ever having made to you personally any report of absence without leave?

A I don't recollect any such report.

Captain Carter: There was one time, General, I don't recollect whether you remember it or not, it was in 1895, when I went away. It was in connection with the project for work at Cumberland Sound, and as I say I don't know whether you remember it or not, because I stopped in Washington at the very time and saw you.

A I do not remember it. My not remembering it does not disprove the statement of Captain Carter by any means. It would be impossible for me to remember details of that sort. At the same time, I should suppose that a thing of that sort would be noted on the personal report of the officer who was passing through the city. And further than that, all officers passing through the city are required by regulations to make a registration of that fact at the office of the Adjutant General. I never took it upon myself to inquire who complied

with those things. Those things might readily happen and did happen, no doubt, without my remembering them, but I don't remember the case referred to by Capt. Carter.

828 Major Raymond: General, you have had a great deal of experience in connection with river and harbor improvements and you have also had extended opportunities to see the work executed by Captain Carter. Will you be kind enough to say what opinion you have formed in respect to the improvement of the Savannah River as a piece of engineering work and of Captain Carter's ability and the character of his services in connection with that work?

A I think the improvement of the Savvanah River is one the most successful that has been accomplished on the Atlantic Coast, and I am pretty familiar with all of them, from the coast of Maine down to the coast of Florida; and the conception of the more recent improvement of the Savannah River is, I think, due entirely to Captain Carter, and he deserves the greatest credit for its success. That is my candid opinion. I think all the success of it is due to him, so far as I know.

Q From your observation of Captain Carter's services there, what can you say in respect to his attention to his duties as an engineer officer?

A I can say this: that I never saw a man more interested and enthusiastic about his work, who seemed to be more familiar with the details, and who seemed to exercise more care in the conduct of it than Captain Carter.

Major Adams: Are you familiar with the specifications formed by Captain Carter for the improvement of Savannah River?

A I cannot say that I am now. Of course I knew them as they passed through my office.

829 Q Did you ever make any examination to find out whether the mattresses constructed were constructed in accordance with the specifications or the contract?

A No, I cannot say that I did. I had so much confidence in Captain Carter and his assistants that I did not think it necessary to go into those details. As I said before, when I have confidence in a man I trust him and I had perfect confidence in Captain Carter.

Captain Gillette: General, referring to the question asked by Major Raymond, did you ever make any examination of the subject of that improvement at Savannah River to see

how much of it was probably caused by the training walls and how much of it was caused by dredging?

A I can't say that I did, Captain, but I had the same views with reference to the Savannah River as to the relations of training walls and the use of the dredge that I have with reference to the other improvements that came under my observation, and it may be expedient that I should state what those are as a result of my experience and observation. The object of training walls is sometimes, when the material is of such a character as to be movable by them, to expect the training walls, if time permits, to make the channel ultimately. That is a theoretical question. You never can tell what a training wall is going to do absolutely. Sometimes, under the pressure of the needs of commerce—I am speaking of my own experience in general and will go back to the
830 Savannah River directly—the dredge is put in to make a channel, with the expectation that the training walls will keep it when made; and the same use of the dredge is necessary if the material is so hard that a training wall would not accomplish its object, but after making the channel, would maintain it, and as I said before you never can tell what a training wall will do. At least I never could tell exactly what was going to be the effect of a training wall either as to depth or location of any channel which it was expected it would influence. And coming back to the Savannah River, I think it was impossible for any one to say what was going to be the full effect of the training walls or whether it would be necessary to put in the dredge or not or to what extent it would be necessary to dredge. We can make estimates, Captain, but we cannot always tell how they will turn out.

Captain Gillette: Did you ever make any investigations—in the first place—the appropriations for Savannah have apparently been very liberal—did you ever make any investigations to compare the money spent with the results accomplished, to ascertain whether they were accomplished economically or not?

A I have not. The work has been going on as I understand it since I was Chief of Engineers, and the Chief of Engineers has not time for things of that sort.

Q I want to ask these questions with a view to illustrating your view upon the excellence of the work.

831 Captain Carter: General, it is about 18 months, as well as I remember, since any dredging has been done in the navigable channel of the Savannah River, and only about

a month ago a ship drawing 24 feet went from the city to the sea and the pilot stated that they could probably have taken a foot more. Do you remember what used to be the condition before we had this work done and then after we would dredge, one year after, what condition we would find the river in when the next appropriation became available? In other words, was the effect of the dredging permanent?

A I remember the Savannah River perhaps farther back than anybody who is present because I went on the Savannah in 1853 and my connection with it was continued more or less up to the first of February, 1897, so that I can speak from experience, and I say that the plan of improving the Savannah River as I first knew it depended mainly upon the dredge and it was necessary to do the same work over and over again. This is the rule I may say almost everywhere where the conditions are of a similar character. This is the system that prevailed very extensively until the present method, the continuous contract system, was adopted, which enabled a plan to be formulated for the complete improvement of a river and to be carried out in a systematic way. Hitherto much money had been wasted because small appropriations were made from time to time, but the pressure of commercial interests was so great that something had to be done at once and the only thing as a rule that can be done to make a channel quickly is to dredge it; & perhaps over and over again and oftentimes I have dredged channels when 832 I was certain I would be obliged to do it the next year and I am quite sure that was the history of the Savannah River for a long time and probably until the present time. Whether it continues now or not I do not know.

Q General, there is another question about the economical side of the work. These is another stream where the results obtained are somewhat similar to those obtained in the Savannah River. That is the Clyde. Do you remember roughly the relative appropriations of money expended on the Clyde and the Savannah?

A I do not at this moment, but I know, for I have been over the Clyde and over the Savannah, that the improvement of the Clyde has been an enormously expensive one, although an exceedingly profitable one to the commercial interests involved; notwithstanding the contraction of the stream, to which they resorted there, they are constantly dredging it, and they cannot contract it any more without too much diminishing its width & thus its value as an avenue of commerce.

Q As a matter of fact, it cost about ten times as much as the Savannah River improvement and in the Savannah River the annual saving to commerce is greater than the total sum of money expended by the United States on the improvement.

A Those are figures which are matter of record. I don't remember them, and I don't carry them in my head.

Colonel Gillespie: Was the excavation wholly dredging in the Clyde River?

A Some of it I think was by scour.

Q Was there any rock removal?

A There was, I think but I don't remember certainly.

833 Q A large proportion?

A I don't remember the amount. Those things are all a matter of record. A Mr. Deas the Chief of Engineer wrote a book on the subject which I have in my library and which I have no doubt is in this library. I have not been on the Clyde for the last 10 or 15 years.

Captain Carter: I was there in 1895.

Colonel Gillespie: General, the question of rock has been put in evidence quite a good deal by witnesses. Do you know anything about the character of the rock that was used on these improvements?

A Well, I have seen it on the barges. I did not analyze it or weigh it. Those are things that were talked over with Captain Carter and it seemed to me sufficiently weighty and suitable for the purpose.

Q You don't know whether it complied with the specifications or not?

Q I did not have the specifications in my hand at the time. When I went to inspect a work as Division Engineer, my rule was, before I left my office to read over the specifications so as to refresh my memory with reference to them, but I don't recollect that I ever took out the specifications and examined the rock and those things at the moment, but I always had those things in my mind, and I never had occasion to observe in my inspection of Captain Carter's work, the mattresses or rock, so as to notice that they were not in accordance with the specifications. If I had, I certainly should have called his attention to it.

834 Q Were you ever at the point where the mattresses were constructed?

A The only mattress I ever saw in process of construction is the one to which I have referred at Fernandina. I never saw a mattress in course of construction on the Savan-

nah River, so far as I now remember, though I saw them on the scows in the river.

Q They were not built on the Savannah River.

A I mean the later ones.

Captain Carter: I don't know whether you remember about my speaking to you about the desirability of Florida rock in connection with the inner end of the south jetty at Fernandina or not, that it was light and did not settle so much as the other, but that it had the quality of being porous and it cemented together and was covered soon with a shell growth, and therefore I desired it.

A I don't recollect it. I recollect this; that the general character of the stone used in Florida, on the St. Johns and elsewhere is not as good as it is in some other places. We all know that we don't get as good stone in that part of the country as up here.

Q That is for building purposes?

A No, I am talking about this river and harbor work specifically. On the St. Johns River there were at one time 2 or 3 kinds of stone used. One was for the hearting and another, a better class of stone, was used for the covering of the jetty on its more exposed portions. It was of larger sizes and more compact in its structure. Whether those points
835 came up on the Savannah River I don't remember, but I have a general impression that I did not see any reason why the stone I saw should not be used in weighting mattresses on any of the works that came under my observation.

Colonel Gillespie: Do you remember anything as to the character of the work that was designed by the Board of 1895 for Fernandina?

A At what time in 1895?

Q December, 1895.

A I recollect distinctly that the Board was organized by me, and because I thought the subject needed revision, and as to the details of the project which they submitted, it is like the details of many other projects; I would not like to undertake now to say about the details, but the record would show what they were and whether I approved them or not.

Q Do you remember what was the character of the work?

A No I don't at this time in detail.

836 October 26, 1897.

MR. ROBERT MACLAY, President of the Knickerbocker Trust Co., appeared before the Board and was examined as follows:

Colonel Gillespie: Mr. Maclay, you know that we are organized by the authority of the Secretary of War, this Board.

A No, I did not know that. Is this a Board of Investigation?

Q Yes sir; we are organized by the Secretary of War under authority of the President for the purpose of investigating certain charges that are made against Captain Carter, who was in charge of the Savannah Distirct, and the Board in following out its instructions have found that certain checks that were drawn for work done under contracts for which he was responsible were paid by the company of which you are the President. I present these checks to you (handing two checks) to see if you recognize them. One is number 270536, dated Savannah, Georgia, July 6, 1897, drawn to the Atlantic Contracting Company for the sum of $230,749.90, and the other is check number 270537, dated Savannah, Georgia, July 6, 1897, and is for the sum of $345,000. Both checks are drawn in the name of the Atlantic Contracting Company and are indorsed by John F. Gaynor, President, placed for deposit by D. B. Greene in the Knickerbocker Trust Company. I ask you if you recognize them?

A Well, I never saw the checks before. You want me to verify the inforsements, I suppose. Yes, that is the stamp we use and that is the signature of our Secretary.

837 Q Now, Mr. Maclay, how was the money drawn on those checks, would you suppose, according to that indorsement?

A Now then, that is deposited to this man's credit.

Q Those checks are?

A Yes, that goes into his account, to Mr. Greene's for deposit. It says "For deposit to the account of Mr. Greene." Now Mr. Greene would draw his checks against it.

Q The Board would be pleased to have you furnish a detailed statement of the checks drawn upon the account, this account, which shows how this money was distributed.

A Well, that is the "milk in the cocoanut" of course. I

cannot see how it would be proper for me to do so. It seems to me that it would be a breach of trust on my part to do it. If this is a Court of Inquiry, if you will put me in legal shape where I am compelled to do so, if you will subpoena me, I will cheerfully furnish you with the information.

Q We have not the power to subpoena. We have the power to investigate. We know that that money went to your bank.

A I want to be called before you in a legal way. If you have not power to subpoena me, I don't wish to answer. You must have some power to take some act that would place me right where I would be compelled to answer. If Colonel Gillespie had had a transaction with Captain Carter and I was asked about it and knew of it, unless I was compelled by some legal process I think it would be a breach of faith on my part to divulge the transaction.

Q I want to say that the charge under which this man, 838 Captain Carter, labors, and which was made the basis of our organization, was a charge of conniving with a contractor in the expenditure of Government money. Now we are organized to investigate that and as an organization we find that money went to your bank.

A It did not go to our bank. It went to Mr. Greene. You are not investigating a charge against Captain Greene. Your charge is against Captain Carter.

Q Mr. Greene was one of the contractors.

A Exactly. I Understand your position and you must understand my position. Now we have got 4,000 depositors and we cannot open those accounts except by due process of law. Now there must be some way by which the United States Government can direct me to show that account. That is all I ask you to do.

Q Can you afford to be the recipient of money which we claim is drawn against the United States and not give us a statement of how the money was distributed?

A That is merely a statement. We have no evidence of that before us. Our depositor is not on trial.

Q No, but we have reason to suppose that that money was drawn improperly.

A Well, sir, I am very anxious to give you those checks and to exhibit that account, if that is a fact, because I do not want to defeat the ends of justice; but you must do it in a legal way

Q The object of this investigation is to prevent publicity.

A I cannot tell what your object is, but you must pro-
839 tect my position. If you don't how can I testify? None of our depositors would feel safe in doing business with us. Those charges against Captain Carter may fall to the ground, and then if I had testified I would have slurred my depositor. I have taken counsel on this. If the United States Government can place you in some way by which I am compelled to furnish the information, then I shall do so.

Q In a similar case, Mr. Maclay, I made a similar request of a company here and I was referred to the legal counsel of the company and he said, "I understand your application. It is thoroughly right and proper, but the only fault I find is that you have not asked the consent of the person whose bank account you wish to examine;" but in this case I have asked it and he declined after his attorney's counsel.

A I am perfectly willing to abide by the decision of our counsel in this matter. I can see no way in which I can give you this information.

Q We simply made an official application for a complete statement of all the checks drawn out in the disbursement of that money.

A You see the way it presents itself to me.

Q But if the man is not guilty no harm is done.

A Yes—I don't know about that.

Q What harm is done?

A The man has an imputation cast upon him, if he is not guilty.

Q We exonerate him if he is not guilty.

840 A At the same time, I don't feel that I have the right to do it. More so than ever when you say our depositor has declined to give the information. Now then, if I give this information when my client refuses, I must be compelled to do so by due process of law. That is the way it strikes me, but for some reason which is sufficient to you, you don't want to give me a subpoena. Is that so?

Q I don't have the power to subpoena.

A If you can satisfy our counsel that there is any other way to get this information, I shall be glad to give it.

Q It is very unfortunate that a man should have a charge of this kind over him and has not the power of exoneration.

A You know that the books that we have would merely give you figures. They would not give you names. We have no checks in our possession and have not had for a long time.

Q You mean to say that the checks were returned?

A Yes, the book was balanced and the checks returned and there has not been much money deposited since. All we could give would be simply a record of the figures, of the amounts drawn and no names.

Major Adams: Would you have any objection, Mr. Maclay, to giving the amounts drawn about this time?

A Well, that is what you want. I would give you the whole of the information if our lawyer says it is proper for us to give it. I would do it most cheerfully here if I was subpoenaed in a legal way without consulting anybody
841 because I know it is my duty to obey the law. But a trust company acts in a trust, a confidential capacity. These matters are deposited with us and we have no right to give any information with regard to any of our clients' accounts except by due process of law. That is the position I take. If I am wrong about it, I am ready to be straightened by our lawyer.

Colonel Gillespie:

Q Well, there is no necessity for my going to your lawyer if you have gone there already and gotten a decision.

A There is one point; I did not know that you were a legally constituted Court of Inquiry.

Q Yes sir, we are.

A I don't occupy the position of an obstructionist. What I do I do from a sense of duty. I feel that it is my duty as a citizen to help you in any way that I can outside of my duty as a president of a trust company to investigate a crime that has been committed against the Government, and I want to do it. I would suggest that I should see my counsel, Mr. Julian T. Davies of Davies, Stone & Auerbach. He is close by. Are you willing for me to see him?

Q Certainly.

A I will do whatever he says.

Major Adams: Colonel, why not take the copy of the order convening the Board and let Mr. Davies see just what it is?

A I think if the Colonel would see Mr. Davies himself, possibly something may be suggested.

(The original order was exhibited to witness.)

842 A I cannot understand—of course you do—I can't understand why, if you are a Court of Inquiry, if you are organized into a Court of Inquiry, why you have not a right to subpoena just the same as any other court has?

Major Adams: It is a military court and we cannot op-

press the citizens. We summon the Army officers and they come without any trouble.

Colonel Gillespie: They come in like heroes.

A I wish you would see Mr. Davies. You understand if I give you this information, all I could give you is simply amounts; no names.

Q How do you suppose that money was drawn?

A It was drawn by checks. There is no question about it.

Q Where were those checks cashed?

A Well, they were deposited in our company and these went through the Clearing House.

Q Is that true?

A Let me see it. (Reading from check) "The Atlantic Construction Company." Now this is indorsed by the Knickerbocker Trust Company and you see we are not members of the Clearing House; so these were deposited in the Manhattan Bank. It is one of our depositaries, and then they went through the Exchanges and were then returned to us.

Q How were those small checks paid which you say were drawn against the money? Did you have as much as $500,000 in currency or bills to pay those?

843 A Oh no. You want to know if we paid out the currency. They were drawn direct to an individual. There is no question about that. Not drawn out in currency at all, because we do not have any such amount of money on hand as that. Yes, if you could get the names of the parties to whom those checks are drawn that would help you—help you wonderfully. We could only give amounts.

Q Is there any way in which you think we could get them?

A The man himself has them.

Q Is there any other record between your bank—between the Assistant Treasurer and the individual himself by which we could get the names on the checks?

A I don't believe there is. There are so many hundreds of thousands of checks banks don't usually keep names, just amounts. They don't bother about names. They couldn't stand it. They couldn't get through with their work if they did. I will make inquiries as to the modus operandi of the Clearing House whether there is any record kept of the checks and of the names on checks. They may there. They have more machinery than the banks. I will find that out.

Q That will materially assist us.

A They might possibly keep a record there, as they have machinery to do it, but no bank would.

Q That goes into the Clearing House (pointing to checks), which we understand is a general leveling up machine between the smaller banks and the Treasury. This went in there and they were credited with this amount of money and the
844 Treasurer of the United States was debited with that money. You had to settle with the Clearing House?

A We don't do anything at all with the Clearing House. We simply deposit in the Manhattan Company and that goes to our credit. We keep an account with the Manhattan Company, and the bank does the rest.

Q That money would be drawn out through you?

A Oh yes. The bank have nothing to do with it at all.

Q These checks would never come back to you, would they?

A No, they would not.

Q You deposit them in the Manhattan Company, and that is the last you know of them?

A Yes.

Q They go to the Clearing House, and then they are sent to each bank from the Clearing House, and in this case they would go to the Assistant Treasurer (of the United States) and the Assistant Treasurer would be debited with that sum and the Manhattan Company would be credited.

A Yes.

Q But a man could draw checks on you against his deposits?

A He could draw a check on us and go somewhere else and get the currency, but he could not get it from us. He might draw it to his own order, or he might draw it to bearer.

Q Is there no means by which you could get the currency out of the Treasury?

A Oh, we could get it, but I know we never did it.
845 It is not our policy to keep a large amount of currency on hand. A trust company doesn't do it.

Q You stated then that this money was deposited by checks and not by bills?

A It must have been deposited by checks in the first instance For instance you might draw a check to your own order and go to some other bank and get the money but in the first instance you would not get it out of us, in money, but would take that check to some other bank.

Major Adams:

Will you be so good as to look and see if you find any-

thing on them to indicate that they went through the Clearing House at all?

A (Reading from checks) "Guaranteed. Knickerbocker Trust Company. E. B. Eldridge, Secretary." "Indorsement guaranteed. Manhattan Company of New York," No, I don't see anything to show they went through the Clearing House.

Q I understand they did not go through the Clearing House?

A I don't see anything on the checks to indicate that they went through the Clearing House at all. That is queer.

Q Well, is it not possible that the Manhattan Company may have wanted the currency and went to the Treasury and got it?

A That is it exactly, and they took the whole of it.

Q Is that the way it was?

A Generally the way, I believe so. Being a United States check it is just the thing to use if a bank of circulation needs money and they want to save drawing their own checks.

846 Q What is that Ward, H. E. on the corner?

A I suppose that is some sub-treasurer's mark.

Colonel Gillespie: The Manhattan Company drew it out in bills? What would be the case if they wanted the currency?

A They may have wanted the currency. Banks want currency all the time and go to the sub-treasury to get it.

Major Adams:

Q Would there be any record in the sub-treasury, if that was the case, as to whom currency was paid, on a check of that size?

Colonel Gillespie: I should think so.

Mr. Maclay: It seems to me so.

Major Adams: Colonel, I understand Mr. Maclay asked you to go and see his counsel with him?

Colonel Gillespie: Yes. When would it be convenient for you to go

A Now. Right now.

Major Adams: We found out from the Treasury Department the checks were cashed.

A They did not go through the Clearing House.

Major Raymond: On everything that goes through the Clearing House I suppose there is a clearing house mark?

A Oh yes; just as like as not the bank may have sent that

over to get the currency on it. Another thing about this: this was deposited uptown, these checks. You see, we have two places of deposit. We have one at Fifth Avenue and 27th Street and one at 66 Broadway. This was deposited at
847 the uptown office; endorsed by Eldridge.

Q You would not have any of the names on those checks then?

A No, we would not have any names. I cannot see where I could help you, just having a lot of amounts; but we can give you dates—dates and amounts—but we cannot give you names because we don't keep any records of names. The books have been balanced and the checks returned some time ago and the account has been rather light since.

848 New York, October 27, 1897.

The Board met this day, all being present.

Colonel Gillespie: (Turning to Major Adams) Do you wish to ask Captain Carter some questions?

Major Adams: Yes sir.

Captain Carter was thereupon examined by Major Adams as follows:

Q You have expressed a desire to me to explain all matters relating to your own bank account, to the bank account of R. F. Westcott in which you acted as attorney, and also the matter of your purchases with the different brokers. In accordance with that a letter was written to you October 20th 1897, asking for five different papers. You have furnished three of them; two you have not furnished. The ones you have not furnished are, first, your personal check book on the Union Trust Company from January 1, 1896, to date, and second, the pass book of R. F. Westcott showing a transfer of $45,648.65, June 5th to statement account. Can you furnish those?

A I have not been able to find either one of them. As I said to you the other day I supposed my personal check book was in my possession. I have looked and found it is not. I then went to the Union Trust Company and asked to look at my cancelled checks to see whether or not any checks
849 from that book have been put in there since I was in the North, and I found that none had, that the few checks that I drew since then were drawn on loose sheets, so I infer that I must have left that book in Savannah with my other check books.

Q It is not with your check books?

A It is not. Now of course, I have about 100 boxes in the course of my professional career, and it may have been that they were packed in there by Mr. Brown by mistake, but it seems quite improbable because my private affairs were usually kept in a desk and were packed by him into one or two places.

Q Do you wish to say anything about the statement I made about the pass book?

A Yes sir. I don't remember having seen the pass book at all, although I may have used the pass book. This account of Mr. Westcott's I find has been running about twenty or thirty years, and when he went away he transferred his account to a statement account, and I find by looking at the report from the Union Trust Company a statement that the pass book was sent with the cancelled vouchers. Now, I don't remember that pass book; but I have seen Mr. Westcott's pass book when I have been with him at various times and remember it was a small book with flexible yellow covers, and the fact that it is not with these cancelled vouchers makes me think it must have been lost. I don't know where the book is.

850 Q Do you wish to say anything further about it?

A Only that I have tried in every way possible to see whether I could find these things and I have been unable to do so; but if there is anything required concerning them, why I think the cancelled checks which came from them would show the same thing the book itself would show. Of course in the absence of being able to find those that is all I can do.

Q I think not. The stubs of the check book ought to show what they were drawn for; the checks do not?

A In the absence of being able to find those I don't know what I am going to do, but if there is any check which you have which I might be able to remember what it was for, I will be glad to trace it up in every way possible. I want to do everything I can, but of course I don't know where that is and I have been unable to find it.

Q Will you consider the request for these two books renewed by the Board?

A Yes sir.

Q On October 11th Colonel Gillespie wrote you a letter in which he asked for a copy of the statement of your account with the following named brokers, Reed & Flagg, C. H. Vandeventer, Platscheck & Co., Austin R. Myers and Watson &

Gibson. You have not furnished the statements of Reed & Flagg, C. H. Vandeventer and Austin R: Myers?

A I think you are mistaken about that. I furnished the statement of Reed & Flagg, but Austin R. Myers—I tele-
851 graphed to Savannah and the telegram was returned to me saying he was out of town and was not in business. He used to be in the Morning News Office in Savannah, and I don't know where he is. I have written again and just as soon as I find out where he is I will try to get that from him.

Q How about the statement of C. H. Vandeventer?

A I made an application for that and received a reply from Judge Van Wyck, I think his name is, he is his attorney, saying that Mr. Vandeventer was out of business, but would make inquiry for him and if he could get hold of any of his books he would be glad to give the information to me, and just as soon as I get that I will produce it.

Q Will you just consider the request of the Board renewed now for the statement of your whole account with Reed & Flagg, C. H. Vanderventer and Austin R. Myers?

A Yes sir.

Q The Board is informed that on October 9th, 1895, you deposited with Reed & Flagg $33,000 in currency. Will you explain to the Board how that money was obtained?

A I don't remember at this date my deposit of that amount with them but if that be true—I remember I did deposit with them currency at various times, and if it be true that I deposited with them currency at that date it was from the safe deposit box from Mr. Westcott where I obtained the only currency to which I had access.

852 Q On October 10th, the next day, you deposited $16,000. in currency with Reed & Flagg. Will you explain to the Board where you got that $16,000?

A If the deposit was made it must have been in the same way because I had no other means of getting currency.

Q On July 5th, 1895, you deposited in the Union Trust Company $14,500 in bills. Will you explain where you got that?

A If that be true that I deposited that amount I say it must have been the same way because that is the only place where I had access where I could have obtained those.

Q On June 7th, 1895, you deposited in the Union Trust Company $30,828.12. Will you explain where you got that money from?

A You say that I deposited. I don't remember at this

date; was it a check or was it in cash? I mean was it gold, or currency, or check. I don't remember. Of course I know this without knowing what it was, that it was in connection with Mr. Westcott's account because I had no other means of getting such sums of money.

Q On March 7th, 1895, you deposited in the Union Trust Company $36,025. Will you explain where you got that money?

A That was also Mr. Westcott's because I had no large sums except through his business.

Q Mr. Westcott was in Europe in 1895, was he not?

853 A Yes; he went to Europe, I think, in December, 1894 or January, 1895, I don't remember.

Q Will you explain to the Board from what source you derived these large sums?

A I either got them from his safety deposit box where he had been keeping, as I have stated likely continuously for some time previous to that— I don't know how long—or perhaps from the sale of securities of his or real estate. I don't remember the details; but they were either from the sale of securities or cash from his investments.

Q January 27th, 1897, you proposed to invest $55,000. to $60,000. in Orange, New Jersey. It appears from the correspondence that you were to loan that much, and on this loan you could not expect to receive more than 4%?

A It is an investment instead of a loan isn't it?

Q Will you explain where you expected to get that $55,000 to $60,000?

A Yes sir. I had from time to time securities placed in my possession which I had the use of, and which finally were to be mine, and in discussing these investments with my father-in-law he stated to me that he thought the safest plan for me would be real estate; and he has had for a long time large holdings of real estate in Orange, and he stated to me

"Now, if you convert these things into real estate in

854 Orange you won't get so much interest perhaps as you would on the other things I will let you have, but it will be safer for you," and then he said to me "Don't you do it unless you are going to be satisfied with it," and we talked about this matter and we then corresponded with each other about this matter, and finally, I think it was in March of the present year, I decided I would like to do that, and it was with the intention of converting these securities which I had access to and which were intended by him to be mine which

were in my possession into this loan; that is where I expected to get it.

Q Have you represented to the Board at any time that the investments made by you in your own name were afterwards transferred to Mr. Westcott?

A Mr. Westcott has given me some things which have not been transferred back to him. The investments I made for him I turned over to him, I think, every one. I don't think I have anything I have not turned back to him before I went to Europe.

Q Did you in March, then, hold $55,000 to $60,000. which was invested in your own name?

A With what he had and with what I had saved up I think there was more than that. I am not sure about that, the total amount, because I had some investments in Savannah I had been saving up little by little for a great many years, and those were mine. Then I had some property here which
855 had come from him—I must have had that much at that time with his that was in my possession at that time.

Q In making these investments in Orange you have stated that Mr. Westcott was to put in the land and you were to loan money to build the house?

A No; not for loaning money; to put in money and build the house.

Q In whose name does the title to the land stand to-day?

A Mr. Westcott has transferred to me—given to me—a half interest in the whole thing—the land and house.

Q In what way?

A A deed to me.

Q Have you turned over to him the $60,000?

A No sir not all yet; one piece of property I have not yet turned over to him.

Q Explain to the Board how you got the part you turned over to him?

A The part I turned over to him—a part of it came through the intermediary of my wife, and part of it came direct.

Q In March, 1897, did it stand in your name or his name?

A I don't remember.

Q Can you refresh your memory as to that?

A Yes, I could look at the records and see.

Q Will you bring them, a complete statement of that?

A Yes sir.

Q Having in mind your statement to the Board or

856 rather to me personally, you wanted to explain all this I now notify you to make a complete statement as to each item—there are six?

A Which do you mean; do you mean these items covered by the questions asked me?

Q Yes; all the information you can?

A Can I have it in writing so that I can see just what it is?

Major Adams: You will have a copy of the stenographer's report which will give you the information.

By Colonel Gillespie:

Q You stated that you had special securities which you expected to sell to invest in this Orange property?

A Yes sir.

Q What were those securities?

A Part of them were some shares which Mr. Westcott had.

Q What kind of bonds, special investments—you can remember that?

A I don't remember the details of that because Mr. Westcott would change them; sometimes he would tell me "you can have certain things, and the next day he would determine he would sell them and give me an equal value of something else. I remember he asked for some Houston and Texas Central he wanted to sell, so I never kept a close, account because he did just as he pleased with those things.

Q I thought your statement was that you held for your own purposes certain special securities which you ex-
857 pected to invest in this Orange property?

A These were mine. I mean what I considered he had allowed me to have as mine; they were in the box with his jointly and a piece of paper put around them.

Q What were those?

A I don't remember, because they were turned over to Mr. Westcott and what they were I don't remember. The other piece of property I can remember because that was a piece of real estate.

Q What piece of property was that?

A A piece of property he gave me some three or four years ago on Eighth Avenue.

Q Who was the agent for that property?

A A man by the name of Bragg.

Q What was that property worth?

A I think it was worth about forty or forty-five thousand dollars.

Q Then you stated you had an investment in Savannah; what was that?

A The first investment, I think, I ever made was $500. in some Tow Boat stock; then I added to that as I could, and the stock was doubled and then doubled again—I mean script dividends—and then I added to that. Then in addition to that I had 500 shares in the Lighterage Company which was doubled in the same way, and I don't remember, but I think there were other little things I had in Savannah; some of the little things I had in Savannah were purchased by me or Mr. Westcott.

858 Q What were those?

A Some Brush Electric Company stock and some Brewery stock.

Q What was that Tow Boat Company?

A It is called the Savannah Propeller and Tow Boat Company. It is a Company which owns Tow Boats which does a general towage business in Savannah.

Q Was it employed in any way by the contractors?

A No sir, I think not. I think they might have hired some tugs but not in any other way. It was an entirely separate organization.

Q Separate from what?

A From the contractors. It was a Savannah organization. It is an incorporated Company.

By Captain Gillette:

Q Who owned the Barge Tomalich?

A That was owned by the Savannah Dredging Company. I don't know who owns it now. It was never owned by the Propeller and Tow Boat Company.

By Major Adams:

Q Will you tell us in what form the property came to you from your wife and through your wife?

A It came in presents to her from her father.

Q That is not what I want to know. I want to know the nature of the securities and bonds or stock whatever it was?

859 A I think there were some Chicago and Northwestern which came through—I could not remember at this date—I don't remember because nearly all of these things have been changed either on the advice of Mr. Westcott or others since that date and I don't remember.

Q The property that came direct to you from Mr. Westcott in what shape was that?

A Sometimes that came in the shape of bonds and sometimes in the shape of money from him.

Q Can you give us the names of the different bonds?

A I don't believe I can give you those, because as I have said they were turned back to him in part for this Orange property and then they were turned over by him from time to time so that I don't know. I remember Brush Electric but those were sold by him afterwards on the theory—I am not sure whether they were those or not. He had so many different kinds of securities I don't know which ones I had.

By Captain Gillette:

Q You testified a moment ago as I understood it that the particular property that you were proposing to invest in in Orange came to you in two parts, one directly, the other through your wife, and that Mr. Westcott was anxious to see that you were satisfied with 4% on this investment. The question is what was the form of that property which was to be the basis of this investment, the part you tes-
860 tified that came from your wife and part direct from him, what was the form of that that came through your wife, was it stocks or what?

A No stocks ever came through my wife. It was either money or bonds. I don't think any real estate. I think nothing except money or bonds came through her.

Q What was the form of the other that was made direct; you must have known exactly what you had on hand that you were going to make this investment with? I cannot conceive of a man making or proposing to make an investment of $60,000. without knowing something about what it was?

A I am not responsible for your lack of inability to conceive of these things.

Q I ask for an explanation?

A I am very glad to give the explanation, but as I say I am not responsible for your inability to conceive of things. All I state is this, that this old gentleman was liberal to me and these things he gave, as I say, I don't remember because sometimes I would come up and find that things which he had given me before he had changed absolutely, and of course being his son-in-law I did not feel I had any right to hold on to these things. He would think perhaps from the fluctuations of the market it was desirable to sell one thing and in place of it put in another, and so I say sometimes the form

of what I had would change four or five times say in six
861 months. When I was up here I talked it over with him sometimes, and when I would be away I would know nothing about it until I came back. He has consulted me on these things except when I was absent.

By Major Adams:

Q Will you state to the Board about how much currency Mr. Westcott had in his box when he went to Europe?

A I don't know, it was quite a large sum.

Q How much do you think?

A I don't know. I think that may be in the box was a memorandum, but I don't know. It seems to me there was a large sum but I don't remember how much.

Q Will you explain to the Board from what source that large amount was derived?

A That I don't know because when I first had access to Mr. Westcott's safe deposit box he had amounts which he had been getting for some time, how long I don't know. I don't know the sources of Mr. Westcott's wealth. I only know, I think that he organized the Union News Company and he sold the United States Express Company to Mr. Platt and organized the Westcott Express Company—in fact, I don't know all his business.

By Colonel Gillespie:

Q When did you first have access to his box?

A I think the first time I had access to his box was in the fall of 1892 or spring of 1893. Before that time he lived
862 in Orange and he had a good many of his securities in his safe in Orange, and then when he left Orange which I think was in the fall of 1892 he never went back there, and none of us have ever gone there to live or stay since that time.

Q Have you access to that box today?

A No sir, I have not had access since I went to Europe. When I sailed for Europe I turned everything over to him.

By Major Adams:

Q Will you state to the Board about how much in currency you took out of that box all told?

A I took out the major portion of what was in there, I remember that, because Mr. Reed advised me that the panicky times were over he thought it was better to make these investments and I thought so too, better than to let it lay without any interest, the only object in letting it lie was in case of more trouble in the market I could make more in one day

than I could in five by having it invested, so I remembered I invested the major portion of what was in there, but I don't remember how much.

Q Did you use that box to deposit your own currency, cash, in?

A No; never had any of my own during that time, because the only time I ever had any of my own was when he gave it to me or immediately before that time. At that time the only thing of my own, as I remember, came in checks, and those I deposited either in the Union Trust Com-
863 pany or the Merchants National Bank in Savannah.

Q Will you furnish the Board with a written statement showing the amount of currency in the safe deposit box when it was turned over to you?

A I don't know whether I will be able to do that, because Mr. Westcott gave me everything he had—I mean control of everything—every single thing he owned with powers of attorney calling for papers &c. and I don't know that I can get you that. The best thing I could do would be to think it over and I am sure that would be only a rough estimation.

By Captain Gillette: Q Did you give Mr. Westcott any memorandum or receipt or anything to show your responsibility for this large amount of currency while he was gone or while you had access to the box?

A No sir, I never gave Mr. Westcott any form of receipt or memorandum. His trust was implicit in me. He never exacted anything like that from me whatever as the whole thing was left on trust and on faith to me and to them.

Q Did his other children or possible heirs know of that arrangement?

A That I don't know.

JOHN F. GAYNOR called:

Examined by Colonel Gillespie.

Q Are you a member of the Atlantic Contracting Company?

864 A Yes sir.

Q In what capacity are you connected with that Company?

A President.

Q What contracts have you had with the Government late-

ly or in the years 1894, 1895 and 1896 in the District over which Captain Carter had charge?

A I have had several; Fernandina, Savannah and I guess two or three little ones along the coast between there. I don't exactly remember now which they were.

Q Is your Company an incorporated Company?

A Yes sir.

Q Do you remember when it was incorporated?

A I think it was before the letting of 1892. I think the papers are in your office somewhere—the papers were all filed there.

Q Have you changed your stockholders since its original organization?

A No sir.

Q Please state who principally constitutes your Company?

A Captain Greene and myself are the absolute owners of the stock—the stock is in our name in the books.

Q Are there any other stockholders?

A My brother Edward has five shares and my brother William has five shares for the purpose of making an organization so as to make them officers. They had to have the stock in order to constitute the Company—only just for the purpose of the Company organization so they could sign checks in case I was away because I could not be at differ-
865 ent places at the same time. We made them Treasurer and Secretary and made additional powers for them to sign vouchers &c. while I was in Europe and at different places.

Q In what capacity did Captain Greene act?

A He was a stockholder in the Company. He was not an officer of the Company.

Q Was he the engineer of the Company?

A Yes sir.

Q Was he regarded by the Company as the chief engineer of the Company?

A Yes sir; considered him very valuable in that respect.

Q Was he regarded as the Chief Engineer of the Company?

A Yes sir.

Q The engineer to whom you would look for any engineering ability?

A Yes sir.

Q Did he perform any other services for the Company than that?

A Everything he could do to help the Company get work and progress it he did.

Q Was he generally know in the community as a ruling or controlling member?

A I suppose so; everybody knew that he was, there was nothing concealed about it. He attended to all letting and run around every where whenever he could do anything
866 good for the Company—whenever he could do it he would go and do it.

Q Do you know whether he had allied with or anybody associated with him in holding his stock?

A I don't think so or I would have known it. I would know of it if there was.

Q Was Mr. Anson Bangs a member of your Company?

A No sir. We dissolved partnership. Since I have been thinking about that, since I spoke to you I have recalled that there were some papers drawn up dissolving the partnership; whenever the St Mary Canal was let, whatever date that was, then we dissolved partnership.

Q When was that?

A I am trying to remember the date. It was before the 1892 letting. He was up there and built that work; it was about that time, I can't give the exact date and we drew up dissolution papers and I think he has got them. I know I had them.

Q He has not been a member of the Company, then, since 1892?

A No sir.

Q Will you look at this check dated June 29th, 1895, to Mr. Bangs and explain the endorsement on that?

A That was drawn to Anson M. Bangs and he has endorsed that over to Mr. Greene. He had a contract there at Fernandina.

Q Was Mr. Greene his partner?

A No sir. We done the work for Mr. Bangs.

Q That is $20,000?

867 A Yes sir. We done the work for Mr. Bangs and he turned the matter over to us. You will find them all that way probably.

Q That is a check for $20,000?

A Yes sir. I presume that is written payable to Mr. Bangs and he endorsed it to Mr. Greene or myself.

Q The only question I asked was why that check should be transferred to Mr. Greene?

A Because we done the work for Mr. Bangs. That check is all right; all of them was that way. All those checks are on the Fernandina contract. We did the work for Mr. Bangs.

Q He has not been a member of your Company?

A No sir; no stock issued in his name and nothing of the kind.

Q Did he do any work for you under the contract of 1894?

A I don't think so. I think there was only one contract? I don't remember any but once we did work for him.

Q There was a contract in 1894 for Cumberland Sound and the contract in Savannah in 1896 and Cumberland Sound in 1896. Has Mr. Bangs done any work for you under those contracts?

A I don't think so; no sir.

Q But he did do work for you under the Cumberland Sound contract?

A We done work for him.

By Captain Gillette:

Q Did you know beforehand you were going to do the work for him?

A No sir.

868 Q You didn't bid on that contract yourself?

A I don't remember. I can't remember. We have had so many lettings. If you will show me what it is I can show you. We are bidding all the time.

Q Cumberland Sound, 1894. The bidders were Anson M. Bangs, R. G. Ross and Rittenhouse R. Moore; your Company didn't bid?

A It seems not.

Q Was the idea of your not bidding the fact that Mr. Bangs did and you would do the work for him?

A I don't remember what the reason was. There was some reason but we did the work for Mr. Bangs. He was the bidder on it.

Q In the previous work for Cumberland Sound in 1892 you did not bid but Edward H. Gaynor got the contract. Did you do the work for him?

A He done the work—I think we done it for him at the time.

Q In doing it for him you employed him as foreman or manager or something?

A He was not working for us at the time. We were doing that work. He done the work on the Delaware River. He had a couple of contracts of his own up there.

Q You never bid against each other, do you?

A Oh yes.

Q The Atlantic Contracting Company and Edward H. Gaynor bid against each other?

A Yes sir. I have bid against Bangs. You will find some lettings at Fernandina where we had a hard time and I
869 know Mr. Bangs got the work. His father was the bidder at that time and he was working for us afterwards. We have had little spats when we sometimes got up against one another.

Q Brunswick Harbor in 1889. You did not bid. Charles C. Ely got that work. Did your Company know beforehand you were to do the work for him?

A No. How did we know that.

Q You naturally had an extensive plant in this vicinity, and in bidding for these contracts that plant has been used on a great many of them. You say you did not bid. Was there any general reason for not bidding?

A Yes; sometimes we did not want to bid for a great many reasons.

Q In cases where you did not bid would you let your plant lay idle or move it away?

A If we could run it and do good business with it we would. Whenever we can make any money out of it we will do it and we will keep our men to work sometimes when we don't make money so as not to break up our crews.

Q Can you remember any reason why you did not bid for instance in 1889 when Charles Ely got the contract?

A Who were the bidders on that?

Q David C. Howett and Charles C. Ely?

A We were doing other contract work and our plant was busy at that time.

Q Your plant did the work?

A I know that, afterwards, but may be at the time
870 of the letting we were pretty busy, and may be thought we would not take it and afterwards made some arrangement and took it and done the work.

Q On April 15th, 1891, John F. Gaynor was the bidder—

Cumberland Sound. Was B. D. Greene interested in that contract—you were the contractor yourself?

A Is he surety on that?

Q I don't know. I haven't got that here. If he was surety was he interested in the bid?

A If he was surety he was not interested in the bid. I know that because that is the law.

Colonel Gillespie: He and Anson M. Bangs were bondsmen.

Witness: Then he didn't have any interest.

Q Then there were neither of them interested in the bid.

A No sir.

By Colonel Gillespie:

Q Do you remember any Tow Boat Company in Savannah?

A Yes sir.

Q Who was the President of it?

A I think Jacob Paulsen.

Q Are you a stock holder in the Tow Boat Company?

A No, I think I am not. My sister has some stock in it.

Q Has B. D. Greene any stock in it?

A No sir.

Q What is the capital stock?

A I think $300,000.

Q Who are the stock holders?

A I don't know.

871 Q Do you know any of the stockholders?

A I don't know. I hold stock in it, either me or my sister—no, I think it is my daughter who has the stock in it.

Q Did you ever use that Company for the execution of the contracts which you had in Savannah and Cumberland sound?

A Oh no. I have hired a tug from them once or twice for a tow in the course of eight or ten years; for instance, if there was a tug boat which would be broken I would hire one of theirs.

Q Did it form part of your plant at all?

A No sir, I don't think I paid them $150. in five or ten years; only when a tug would be broken down I might hire one of their temporarily to tow some barges. There was no other tugs there.

Q Were you a stockholder in the Lighterage Company?
A Yes sir—no my boy is a stockholder; got $2,000. or twenty shares.
Q Who was the President of that Company?
A Elton E. Smith.
Q Do you know the officers of the Company?
A I don't know the officers. Mr. Smith was the President and he owns a majority of the stock, and I don't know who the officers are.
Q Do you know any of the stockholders in the Company?
A I know two or three of them. I don't know how
872 much the stock is.
Q Who were they?
A I think Mr. Paulsen has some in there and I think Mr. I don't know, I am not certain about that. Of course they change and the stock was selling around the street. I remember that.
Q Are you a stockholder in the Electric Light Company of Savannah?
A No sir.
Q You were a stockholder in the Street Railway Company?
A I was a stockholder. I lost all the money I put in it. I would sell it pretty cheap. Two cents on the dollar. I had a little of it. I have got a quantity of these things.
Q Do you own any other investments in the State of Georgia?
A I have got some bonds of the Florida Southern that runs from Macon down there, which is a very good thing; made money on that.
Q Have you ever been interested in any civil enterprise apart from Government enterprises in which Captain Carter was interested?
A Never in my life.
Q Have you ever made any investments in which Captain Carter was mutually interested with you?
A Never in my life not a dollar.
Q Do you know of any investment that Captain Carter had down there?
A I do not. I don't know whether he has got a dollar
873 down there or not. I am not very much in Savannah—probably don't go there twice a year.

Q Do you know whether it was generally understood that Captain Carter was a man of means or not?

A I understood that he had plenty of money after he got married. I don't think he had much before that. After he was married I understood that Mr. Westcott was very good to him.

Q Is he regarded today as a man of means?

A I don't know anything about that. He knows more about that than I do.

By Captain Gillette:

Q Do you know a man by the name of William H. Walsh?

A Yes sir.

Q What relation is he to you if any?

A He was a foreman for us off and on, we discharged him.

Q When did you first hire him?

A I can't tell you. I think eight or ten years ago. We discharged him once or twice; had a row with him.

Q Where does he come from?

A He comes from Fayetteville.

Q Is he a relative of yours?

A He married a cousin of mine.

Q Did you bring him down to Savannah to be a foreman for you?

A I think so; yes sir.

Q Do you remember what year that was?

A I don't remember.

874 Q Is there any way you could find out?

A I don't know. I think it was eight or ten years ago.

Q Where did you put him to work?

A In the mat camps.

Q What contract?

A I con't remember. I put him making brush fascines. I had him twelve or thirteen years, I don't remember exactly, but it is a good while. I had him up to Richmond, I think.

Q When did you first bring him to the Savannah District?

A Ten or twelve years ago.

Q Do you know a man by the name of Cullen McKay Grant?

A Yes sir.

Q Did he ever work for you?

A Is he a negro or a white man?
Q I don't know anything about him?
A There was a lot of negroes named Grant, and there is a white man by the name of Grant, but I don't know what his first name is. Is he a contractor?
Q This man is probably a contractor. Did he ever work for you?
A No, I don't think so.
Q Do you know anything about the Empire Construction Company?
A Oh yes.
Q When was that organized, before or after the Atlantic Contracting Company?
A Long before. We done some work over in Orange, the Empire Construction Company.
875 Q Did you ever do any other work except in Orange?
A That is the only place we worked, I think.
Q Did you ever get your stock in it?
A No; it never was issued, I don't think.
Q Who had charge of the stock book?
A My brother Will Gaynor had it. He went there and worked at that and he had all the papers, and I had forgotten all about it when I heard that it turned up in this investigation afterwards.
Q What was the cause of the extinction of the Company?
A Because we got through, finished up what we went there to do in Orange.
Q It had about the same membership as the Atlantic Contracting Company apparently?
A No. Newton was to have one-third of that—John Newton's share was to be one-third I don't remember exactly, but he had about one-third of it.
Q It was a very small issue?
A I know he had one-third of that. He was the manager of it and was there all the time and finished it.
Q With that exception the organization of the Atlantic Contracting Company seems to have been something or a reorganization of the Empire Construction Company, the same men and about the same share except in that one instance. Do you know any reason why you changed the name,

why you reorganized or that new company was organized?

876 A I don't know why we did it; only we were not in very good graces in Orange. We had a lot of lawsuits and we wanted to get that Company out of existence as soon as we could. We killed horses and men and had everybody pounding us and we wanted to get out of it.

Q About how long an interval elapsed between the death and the birth of the other?

A I don't know. You can find out. I don't know about that. You can see the dates because you have the papers in your office when that other was organized; we had to send them all, down to your office, every year when we bid on the work.

Q You are sure they were left there are you, the organization papers of the Atlantic Contracting Company?

A I think they were because when we had to bid we had to put these papers on file there to show under what law we were organized, and I am pretty sure they were there.

Q What percentage of the stock of that Company did D. B. Greene own?

A He owns one-half.

Q And you the other half?

A Yes sir, with the exception of these two little amounts of either five or three shares that my brothers William and Edward hold for the purpose of organization.

Q Who is the Treasurer of the Company, in fact?

A William Gaynor is the Treasurer.

Q In name, but who is otherwise in fact?

877 A The fact of it is William is Treasurer and he hands over the vouchers to Captain Greene or myself just as happens to be. We are in fact the Treasurers.

Q Who do they draw on down there when they want a check to pay men?

A Captain Greene or myself, either one.

Q Indiscriminately?

A Yes, if I was off Captain Greene would take it and put it in his bank and he would send the money they wanted and if he was off I would send the money they wanted.

Q Suppose each one was to die how would you straighten out your accounts?

A We settle up every month so we would be only a month behind.

Q Do they draw on you about as often as they do on Captain Greene?

A No. Captain Greene being here most of the time it is handier for them to reach him than to reach me. I am on the Canal work and they can't find me half of the time.

Q What percentage or what part of the total drafts that are made up here are made on you and what part on him?

A I could not tell you about that.

Q Do you think you have drawn checks for one-third of the disbursements down there?

A I don't know. I can't tell about that—either he or me all the time.

By Captain Carter:

Q If anybody besides yourself and Captain Greene
878 had any interest whatever in any way in the Atlantic Contracting Company, would you have known of it?

A I should think so; certainly I would.

Q I want to ask you this, whether directly or indirectly to me or to any one for me in any way whatever, has any thing either from the Atlantic Contracting Company or anything in which you have been engaged ever been given to me?

A No, sir. I can answer that positively.

By Captain Gillette:

Q When was the firm of Greene & Gaynor first formed; when did you first do business with Captain Greene as partner?

A After he resigned from the Army; when that date was I don't know. I think it was 1881 or 1882—whenever he resigned.

Q Did he expect to do this when he resigned—did he resign for that purpose so far as you know?

A I don't know. He was a partner with Mr. Bangs. I came in the firm afterwards. He came in with Mr. Bangs and Mr. Dolbey and Mr. Howett, and I came in afterwards—right after he resigned—within six months.

Q So far as you know he resigned for that purpose?

A I don't know whether he quit the army to go into contracts or not.

Q On what basis were you first taken into the partner-
879 ship?

A I had one-seventh of that combination at that time.

Q How did you get it—they owned the Company first and

then they simply took you in as a partner on account of capital put in and services what was the basis on which you were to go in?

A I had to put up my own money just the same. I had one-seventh of that.

By Colonel Gillespie:

Q Has that connection been unbroken from that day to this?

A No sir. Then we dissolved in four years; then we made a partnership for four years with Mr. Howette, Mr. Dolbey, Mr. Bangs and myself and Captain Greene and that extended four years from the time we made it and then afterwards they went off and we commenced to bid against each other.

Q Since that date has this connection been unbroken—Greene & Gaynor.

A We have done business together from about six months after he resigned right straight through. At different times sometimes I would do a piece of work where he would not have any interest in it, and sometimes he done some work himself where I didn't have any interest in it.

Q I mean Government work?

A From the time he resigned we have been connected more or less—within six months after he resigned. I don't know how long; right directly after he resigned.

880 By Captain Gillette:

Q You didn't have to form a new partnership at each contract. If you got a contract on this canal work he hasn't got to come in with you?

A I have just taken a contract for $5000,000. worth of work. I don't know whether he is coming in it or not. I have bid on it and got it and I don't know whether he is coming in or not—whether he will came in or not. I did not consult him when I bid on it. I have told him if he wants to come in on it to put up his share and he could come in. Maybe he will and maybe he won't come in. He has not stated yet whether he will come in or not.

By Captain Carter:

Q If he were a bondsman of yours on any Government work would he be interested in the work then?

A No sir.

Q Could he be a bondsman of yours on any Canal work and be interested in it?

A I think the laws are different in the State of New York;

you have to put up a certified check with your bid.
By Captain Gillette:

Q Did you never know of a case where a man was bondsman of a Government contractor and shared in the profits of the contract?

A I don't think so. I don't remember of any. I don't know.

881 By Captain Carter:

Q If it were an incorporated company then he would have a right to do it?

A Yes; if he was not an officer; that is the law. Captain Greene could go on the Atlantic Contracting Company's bond because he is not an officer. I asked the War Department that very question and they told me they would protect him as a bondsman so long as he was not an officer of the Company. A stockholder could go on the bond and that is the way the decisions are in the War Department.
By Captain Gillette:

Q A man who is supposed to be a partner can go on a bond. Did you never know where an actual partner did go on the bond in a Government contract?

A I don't understand your question.

Q A man is not supposed to be a member of a firm who goes on the firm's bond? I was curious to know if you never knew of a case in your history as a Government contractor where that was not carried out?

A I never heard of it; where the bondsman was a partner on a contract. He might be a partner in other work but not on that contract.
By Colonel Gillespie:

Q I think Captain Gillette's question was does not a man sometimes consent to be a bondsman in order to share the contract?

A That I don't know much about.

882 October 29, 1897.

All of the Board present. Also Captain Gillette and Captain Carter.

Major Adams: Captain Carter, In your statement presented this morning I find the following words: Referring to Mr. Westcott, I find the following: "He has replied to me and I have submitted his reply to this Board that the transactions to which I refer and by which I had the handling and control of large sums of money were had with and for him." I find checks drawn in this book, the check book, "R. F. West-

cott, O. M. Carter, Attorney," eleven checks, to the order of your mother and your brothers, amounting to $4,642.35. I find the checks drawn by O. M. Carter in your other account and which you state belonged also to Mr. Westcott, checks to the amount of $12,350., making in all $16,692.35, turned over to your mother and brothers from the two accounts, and I want to ask you if this was done for Mr. Westcott?

Captain Carter: It was done for him in this way: that he gave me for my own use money and when I obtained that money for my own use I did with it as I chose.

Colonel Gillespie: Do you care to look at those checks?

A No. Of course the amounts I don't remember.

Major Adams: At the last meeting of the Board you were questioned as to certain cash deposits made with the Union Trust Company and with Reed & Flagg, amounting to over $130,000. You stated that you obtained this money from Mr. Westcott's safe deposit box. Have you asked Mr. West-
883 cott to verify that statement?

A The statement that I had the $130,000?

Q That you took over $130,000. in currency from his safe deposit box and deposited it with the Union Trust Company and with Reed & Flagg, your brokers.

A No, I doubt if he knew the exact amount I took from his safe deposit box because I had authority to take from it whatever I chose and invest it and I doubt if Mr. Westcott knew the amount I took. He took from it when he chose and I took from it when I chose and rendered my reports to him of what I did with it, roughly; the details of what I did with what he allowed me to take I did not give him.

Q Have you asked Mr. Westcott to come here and verify these statements?

A I have repeatedly.

Q You state in this paper that you are not willing longer to endeavor to bring Mr. Westcott before the Board?

A If you had seen the character of my last interview with him, I don't think if you were in my place you would be willing to try it any longer. I tried and tried and tried.

Q Captain Carter, It appears from your testimony that under your power of attorney, acting for Mr. Westcott, you could give away to your relatives $16,992. Will you please explain to the Board why, when this account was closed out, it

was necessary for you to deposit so small a sum as $144.84 to the credit of Mr. Westcott?

884 A I don't remember. It may have been some collection of his that I made.

Colonel Gillespie: Let me see the books right there where it comes out. Just look at the check.

(Check book exhibited).

Captain Carter (Continuing) Yes. No. 50. I don't know. It may have been that I received something from Roanoke. I don't know what it is. I used to receive various things from him from time to time, and if they came from other sources over which I did not have control I turned them in with a memorandum, marking them "A" or "B", or whatever they were, and if they came from other sources I put them under another head. I don't remember why I drew these to the order of Mr. Westcott, but the chances are I thought first it was some money of my own I put in there. I don't know what it was. Of course I can't tell. It is just marked "From O. M. C. $144.84." Whether I received that from the Conquest Estate, or from some of his others which I did not have control of, I don't know how. I don't remember.

Q Captain Carter, you have stated to the Board that the money of both accounts belonged to Mr. Westcott.

A Well, that is not strictly so because I had some of my own money in there but I mean the bulk of it, the major part of it was Mr. Westcott's money. In other words, what I had of my own money was so small in comparison with what came from him that I considered it all practically came from him because as I remember it I only used to make a small in-

885 come outside of my own salary. Sometimes it was more and sometimes it was less. There was a $1,500. fee at one time for consultation work, so that I really had money that was my own, but it was a small amount in comparison with Mr. Westcott's.

Q If you could draw out of that account $4,600. for the benefit of your mother and brothers, what occasion was there for your putting in that small amount?

A Well, there would have been no real necessity for it. Of course I could have just kept this small amount and Mr. Westcott would never have said anything; but I suppose it must have come from some of those things that I did not have control of myself. I used to keep a pencil memorandum of some of the things I had control of and of some that I did not have control of, and I think now it may have come to me from

some of those outside sources and I drew this check to put it into the proper account. I don't remember how I did it, Major. First when my attention was brought to the amount I thought it was a check for some mileage, but I see that it is not. I don't know why I did it unless it is for that reason, to get it into the right account. That is the way I used to do I know.

Q After depositing that amount, the total balance, six thousand and something, went over to Mr. Westcott, did it?

A It was this way: I was mistaken about that. I said I drew him a check and transferred it. I find I did not. It was this way: This account was his and has been stand-
886 ing in his name in the Union Trust Company for probable twenty-five years and when he came back from Europe he simply resumed control of it and there was a little deposit slip showing it was transferred from a statement account, which was sent to me, back to a pass book account, because Mr. Westcott preferred to have his account kept in that way. That was the only transfer there was.

Q During this period of 1895, did he ever make you a definite allowance?

A He never did. He allowed me just what I wanted.

Q If you could spend as you pleased and turn over say $17,000. to your relatives, what occasion was there for returning by check the sum of $144.84.

A There was not the slightest necessity except that I always used to do this: the amounts that I expended for myself or gave away I put down under one heading say "X" and then the amounts that I sent out for any little personal things of Mr. Westcott's I put down under say "Y" and the moneys that came in I put down under similar marks, those that I had control of under one and those that I did not have control of under another; the money from properties that I had control of I put under "X" and those that came in from properties that I did not have charge of I put under "Y". Then I could spend from both accounts, even when I was taking out of that "X" account any sum that I wanted to expend for myself. These divisions were made so that I could tell at the end of the time about what I was doing with Mr. Westcott's money. That was all I suppose I must have
887 put those divisions there for. Of course I don't remember at this time. All those divisions were not necessary. I could have left them loose, without any divisions at all, so

that It probably came more just from a memorandum habit that I had than from anything else.

Q Why did you use such vague forms of bookkeeping as "X" and "Y"?

A I have not the faintest idea why I did now. It was for my own memoranda and I did not keep a regular set of books at all.

Q Referring to Reed & Flagg, I read from your statement submitted this morning, page 19: Reed & Flagg and Mr. Westcott:

"I have explained at length my relations with him and at my request oft repeated his brokers have written letters which have been submitted to the Board explaining as far as they felt justified my relations to his account with them."

Here are 7 checks drawn by you as Attorney for Mr. Westcott. Reed & Flagg have explained two of them. Do you know any reason why they should not explain the other five?

(Checks handed to Captain Carter).

Captain Carter: See that was one, and that. Those two are the ones and then these others are the five. No, I don't know any reason except this; They told me they were sorry that they had even let these go in because they are all Mr. Westcott's and that I had no business with them at all. They were checks for the purchase of stock and although the stock was his, yet in order for me to have transferred it, would have had to attach to it the original power of attorney that I had from Mr. Westcott and that would have left me without
888 any power of attorney, because a duplicate power of attorney would not go with them. But these checks were not in my name and were entirely and purely for Mr. Westcott's account and I had nothing to do with them except just as agent, to get the stuff for him.

Q The seven checks are drawn the same way?

A Yes, they are all drawn the same way. (Looking at signatures on checks) Yes, this is the same as that, this is also just the same. But my power of attorney that I had I could not give up. This is the only stock that I ever purchased that way. With bonds I did not need to attach a power of attorney, so that if I made an investment for him in bonds and wanted to dispose of them, I could do it, but I could not do it with stock, so that I had it put in my name for the facility of transfer, and that is the reason why they said they put those two checks out.

Q Referring to those checks number 107 and 110, Reed & Flagg have furnished two statements and they state that the statements include everything in your name individually or otherwise between 1891 and this date.

A Yes.

Q Now here are 5 more checks.

A Yes, but these have nothing to do with me, Major, either individually or as attorney at all. The checks are drawn as attorney because I had his bank power of attorney. The transactions were for him absolutely and this money of his was turned over to them by this bank power of attorney that I had so that the transaction after they got his money, I had nothing to do with it all. The same is true of those other
889 two checks also except it happens to appear on their books in that way as I said because I put it on their books for transfer. You see, I had to sign his checks with my name as attorney, because that is the way the bank power of attorney read. If I had simply put it "R. F. Westcott," they would not have cashed it. I had to add my name as attorney and in every check I drew, it made no difference what it was for, I added my name as attorney, and if I used the money myself, the check on his account would have to be drawn in just the same way.

Q I understand why they included these checks, 107 and 110, in the statement of your account, but I don't understand why they did not include the 5 other checks, numbers 14, 29, 27, 52 and 61.

A Well, that is the reason they gave me, Major, that everything I did for Mr. Westcott as his attorney went right straight down into Mr. Westcott's account and that was the end of it, and I suppose I took bonds down, or cash or whatever it was and it went right into Mr. Westcott's account and my connection with it ceased whenever they got hold of it. It did not do it in any other case, because the stock having been put in my name for the facility of transfer, my name came in on their books in connection with Mr. Westcott's. I asked them about that and they said that is absolutely true because that is the way the books are kept, that when business is done direct with a man it goes direct into his individual account, and when it was to be done for instance like this stock
890 was, although as they said that it was for him also and they knew it, still it went down under my name as attorney because the stock was put in my name.

Q Do you understand that the Board has asked you to pro-

duce the full statement of your account, or Mr. Westcott's account, including these checks?

A I understand that.

Q Have you produced them?

A I cannot. They won't give them to me because they are not mine. I went to them and asked them and they said it is not your account, Captain, and we cannot give them to you.

Colonel Gillespie: You say direct and indirect. Mr. Westcott was abroad. How could they know whether the account was direct or indirect? How would they know anything about these transactions until you came there with certain money in your hand or a check, how would they know anything about that account? You came in with money in your hands and you ordered an investment. How would they know which account except from what you had told them at the time?

A Oh, Mr. Westcott told them about the accounts when he took me down and introduced me to them. I think it was in 1893.

Q A sufficient answer to my question would be that Mr. Westcott told them that every transaction that you had at their office would be for him; otherwise it would not be explained at all.

A He did tell them.

Q Every transaction that you made with that company would be for him. That is the only way it could be explained.

891 A Well, I don't know if he prohibited me from doing anything on my own account.

Q Then they could not know that any transaction that you ordered was for him or you?

A Oh, they would have to rely on Mr. Westcott's word and mine.

Q Mr. Westcott was away in Europe.

A But he told them before he left that I was going to transact his business. I always talked with old Mr. Reed, because I know that he knew the sort of things that Mr. Westcott wanted. Mr. Reed told me from time to time that this or that was just the sort of stock Mr. Westcott would want me to get. I used to get his opinion because he was a man who had been in the business perhaps fifty years or a long time. Prior to my going there I did not know how they kept their books and I did not ask them, but now I see, it is very clear to me, because they kept their books in that way and I did not know how it was when I went there. May be they

would put it down on the account that I had, coming from O. M. Carter, Attorney. I have not seen their books, Colonel, they simply told me their method of book keeping and how they did, you know, and when, as I said, Mr. Westcott first took me down and introduced me to them, to Mr. Reed, I think, he told him I would transact his business. Sometimes I have come down from Richfield Springs when he would be up there and not be able to come down. I used to try to help him out anywhere whenever he did not feel well enough to come down.

Q Who is this Mr. Van Slyker?

892 A I think they call him Judge. I was introduced to him in that way. I don't know who he is. As to Meyers, I think he has come from Savannah to New York and his mother liges in Rochester and may be I can get hold of him. I remember making some purchases in Savannah from him and of course if I can get him I will.

LETTERS FILED WITH BOARD RECORD.

143 K.

New York, October 20th, 1897.

Col. George L. Gillespie,
Corps of Engineers, U. S. A.
Senior Member Board of Officers.

Colonel:—

Referring to your request of the 11th inst., I beg to state,

1st: The transfer of $6436.66 on May 11th, 1896 from R. F. Westcott to R. F. Westcott was only a transfer from a statement account to a pass-book account. The records do not show at whose request this transfer was made, but it appears to be simply a request transfer and not by cheque.

2nd: I find upon application to the Union Trust Company that I have not used cheques from my regular cheque book since leaving Savannah and hence must have left it among my papers there, as I do not find it among my effects here.

3rd: The bank statement from the Union Trust Company of Nov. 7th, 1895 says the pass book was sent with the state-

ment. I do not remember it, and presume it is among my papers in possession of the Board.

4th: Statement already submitted.

5th: Statement already submitted.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. Corps. Engr. U. S. A.

144-K
New York, October 29th, 1897.

Col. G. L. Gillespie,
Senior Member of Board &c.

Sir:—

Replying to the request of the 27th inst. to furnish you with:

1. My personal check book, from Jan. 1896 to date;
2. Mr. Westcott's Pass Book;
3 Date of transfer of securities, Orange.
4 Account with Reed & Flagg,
5. " " C. H. Van DeVenter
6. " " A. R. Myers.

I have to state that the complete statement of the account with Reed & Flagg, standing in my name has already been sent to you. The private check book and the Pass Book have not been sent for reasons already given. The date of the transfer of securities for the Orange property I am unable to ascertain. I am unable to furnish a statement from Mr. Van DeVenter and enclose herewith a letter explaining why. I have been unable as yet to get a statement of the account with Mr. Myers.

Very respectfully,
Your Obedient Servant,
O. M. CARTER,
Capt. Corps. Engr. U. S. A.

MEMORANDUM FOR TRANSCRIPT.

Letter R F Westcott to Oberlin M. Carter dated Oct 18, 1897, a copy of which is among papers filed by the Board is found at p 2016 Vol 3 of Wyman Record.

Letter of O. M. Carter to Board of Officers dated Nov 3, 1897 is found at p 2039 Vol 3 of Wyman Record.

FINAL STATEMENT OF CAPTAIN O. M. CARTER.

New York, October 23, 1897.

Col. G. L. Gillespie,
Maj. C. W. Raymond,
Maj. H. M. Adams,
Corps of Engineers, U. S. A.

Sirs:—

Landing from the Steamship "St. Paul" on my return from London to assume my duties as a member of the Nicaragua Canal Commission, I was handed, on the morning of September 11th, a letter from the Chief of Engineers directing me, by order of the Secretary of War, to report to him in person in Washington. I did so, reaching Washington about 6 o'clock of the same evening and proceeded to the office of the Chief of Engineers, who then informed me that grave charges had been preferred against me by my successor at Savanah. These charges were read to me by the Chief of Engineers, who further informed me that that officer had appeared before the Secretary of War in support of his accusations and that formal charges against me were in course of preparation.

Conscious of my innocence, and stunned by this unexpected attack on my official integrity, and upon the work to which I had devoted so much of my life, and of the success of which I felt that I had reason to be justly proud, I requested the Chief of Engineers to give me an opportunity to meet these charges before I was publicly accused of wrong doing. I then requested an interview with the Secretary of War, which was granted on September 13th, and I was there informed that a Board of Engineer Officers would be appointed to investigate the matter. And it may be stated parenthetically that my natural desire to avoid publicity until after I should have had an opportunity to have the charges investigated availed me nothing, for on the morning of September 14th there appeared in two newspapers an extended and garbled statement of the charges against me.

At this point it will be necessary to give the Board a short narrative of the conditions existing at Savannah at the time I went away. About the last of May I received the

order for my transfer to London. Between that time and the date of my final departure, I was absent some of the time on duty and my attention was diverted from a close personal supervision of the work in my district. I left Savannah finally for Washington about the middle of July, my new duties requiring my departure at that time. I met my successor in Washington and went over with him as completely as I could the state of the whole district in my charge.

In Savannah work was being done on the breakwater. I informed my successor that the mattresses had not sanded up as I expected, but that I hoped the calm weather of summer would effect that result; that the work should be carefully watched, and if the desired sanding-over did not take place the mattress work should be stopped immediately and what was already in loaded very heavily with stone. I explained to him the dredging in progress and what would be desired in future.

At Fernandina I told him it was imperatively necessary to carry the north jetty seaward as rapidly as possible to develop the new channel forming between the jetties. For that purpose I had ordered a seaward extension of eight courses of mattresses, the former courses having, as my assistant engineer reported, filled up to the crest with sand. I cautioned him that the new work would have to be watched carefully, and unless the sand quickly followed to the top of that also it would have to be stopped at once. I told him also the estimate I had formed of the various employees in my district; turned over to him as my guest my house, which I had rented until the first of October, and informed him that I had requested his Chief Clerk, Mr. Sterly, whom I had taken as a soldier from the Engineer Battalion and promoted to his present position, to look after various things of mine, professional papers, books, personal effects, etc., and ship them to me when required. I also gave him letters of introduction to my various friends and extended to him several other courtesies of value, and requested that if any point whatever arose needing any explanation, or which I had failed to make thoroughly clear to him, he would advise me of it and that I would write to him, or, if necessary, would return to Savannah. He expressed himself as satisfied with this arrangement and we took leave of one another.

After my interview with the Chief of Engineers in Wash-

ington and being unable to go to Savannah, I sent to that place by Mr. Connolly a written order instructing Mr. Sterly to deliver to him my papers and personal effects. Mr. Connolly informed me later by wire that Mr. Sterly had declined to honor my order. On the afternoon of the 16th I left New York for that place, arriving there on the following afternoon. On the morning of the 17th, and while en route, I wired the Chief of Engineers for authority to have access to the official records and to my private books and papers, which were then in possession of my successor, who had received them from Mr. Sterly. This permission was at first granted but later was revoked. In view of this state of affairs, I did not go to the Engineer Office to inspect the records until the Board arrived. The charges read to me by the Chief of Engineers, and a copy of which was handed to me, were made during my absence from the country on official business. Those charges which I was called upon to explain before this Board are substantially as follows:—

First: That the fascines and mattresses used in the government work in my District since 1892 were not built according to the specifications, but that a mattress enormously cheaper was used without any reduction in price.

Second: That the specifications require that each mattress be sunk separately, instead of which many mattresses were sunk at once, thus permitting an enormous saving, none of which accrued to the United States—this change being made for the Atlantic Contracting Company to work by but not appearing in the specifications for other people to bid by.

Third: That three types of mattresses at the same price were asked for, and that bids must have been for the most expensive type, the government losing continuously the difference between the expensive type and the type used; and that the work done was so far from the specifications that the government lost $1,600,000.

From these charges the accusation was deduced that I had acted dishonorably.

The Board convened in Savannah at the United States Engineer Office in the 21st day of September at 10 o'clock A. M.

Before the investigation began I gave the Board written permission to inspect privately the private papers and effects belonging to me and in my custody, and which were in

the possession of my successor, with the request that if any matters found therein needed explanation they would call them to my attention.

As the examination proceeded it was soon developed that in addition to the written charges which had been furnished to me I was to be confronted with numerous charges and insinuations extending over a period of many years, for the most part relating to small and unimportant irregularities, to furnish material for which my entire official and personal career at Savannah had been systematically ransacked and pried into. In view of this situation the Board will appreciate the difficulties under which I at that time labored in making my defense.

Nervous to a degree almost beyond endurance; dazed by the bitterness of the attack, it is no small wonder that in some instances my statements as to details occurring years before may have seemed conflicting, and my explanations of transactions which had long since passed from my memory somewhat involved. Since then, however, I have had time to think and to refresh my memory by an examination of the records and private documents, and I make this my final statement, and what is here set down is true and nothing but the truth.

Taking the written charges in connection with the statements and insinuations of my successor before the Board and the testimony submitted by him, we find that the alleged irregularities laid to my account and for which explanation is asked from me are, succinctly stated, as follows:

1. That three designs of mattresses were asked for at the same price, and that this necessitated higher bids by the contractors than would have been obtained had only the design of mattress actually used been specifically described in the specification.

2: That the fascines used were nothing like those contemplated in the specifications, and that the mattresses used were like none of the designs given, but that a mattress enormously cheaper was used without any reduction in price.

3: That the specifications require each mattress to be sunk separately with rock on each layer, instead of which many were sunk at once, thus permitting a large saving, none of which accrued to the United States.

4: That the fourth class stone used is not that contemplated by the specifications.

5: Miscellaneous.

(a) That a written order for a certain load of stone on mattresses in Savannah Harbor was countermanded orally, thus permitting the contractor to sink his mattresses improperly.

(b) That the cost of mattresses per cubic yard at Cumberland Sount is $13.69.

(c) That the amount of mattresses actually used was largely increased over that called for in canvassing bids when Gaynor, Bangs, The Atlantic Contracting Company, Walsh or Ely were the contractors and decreased where Twiggs was the contractor.

(d) That in the specifications for Tybee Breakwater I called for 200,000 square yards of mattresses, but stated later that new soundings showed that 300,000 square yards of mattresses would be repaired, no such new soundings having been taken.

(e) That in my discussion of the inside route from Savannah to Beaufort I made statements which must have deceived the Chief of Engineers, and were apparently intended to do so.

(f) That I gave the Chief of Engineers as a reason for not removing a portion of Hutchinson's Island that people had been buying up lots for the purpose of exacting exorbitant rentals, no such purchase of lots having been made.

(g) That payments were made for piling which was of no use whatever except to the contractor.

(h) That many articles were improperly charged on the pay rolls, and that rolls and vouchers were improperly signed by me.

(j) That in my testimony in the case of Brown vs. The Atlantic Contracting Company I gave false evidence.

(k) That the harbor line at the quarantine station near Savannah was established for the purpose of compelling the City to sell rock to the contractor at low prices.

(l) That I made improper use of funds received from a man named Hirt.

(m) That I have had improper business relations with contractors.

(n) That I was sometimes absent from my station improperly.

(o) General insinuation of collusion between the contractor and myself.

For the purpose of discussion these charges and allegations may conveniently be grouped under two heads, First, matters

relating to the specifications and covering the first, second, third and fourth charges.

Second, irregularities pertaining to my office and insinuations against my private character, covering the residue of the charges, allegations and insinuations. Before beginning to discuss the charges made, I desire to state that there seems to be conveyed in the insinuations against me the impression that I received a money consideration from the contractors, in other words, that I was bribed. That insinuation is absolutely false. What is the evidence in support of it? Nothing whatever. The only thing which has been suggested as even lending a tinge of color to that insinuation is the fact that I have handled sums of money. I have produced testimony from the contractors that no money or other consideration has ever been given to me directly or indirectly (evidence). Further than this I have demonstrated to the Board exactly where the money did come from by the statement of my father-in-law, Mr. Westcott, who gave it to me, whose agent I was and under whose powers of attorney I was acting (R. F. W.), and by the broker who knew of these family relations and by whose advice I was largely guided in doing Mr. Westcott's business (R. & F.). A perusal of those powers will show that I did only what I was authorized to do under them, and the testimony shows that my transactions were solely for my father-in-law, and had no relation to my official acts. I therefore insist with confidence that this insinuation is not only without a scrap of evidence to support it, but has been proven by the evidence, documentary and oral, to be without foundation. This matter will be adverted to later, but now I will take up the charges in the order before given.

As to the First Head.

Matters relating to the specifications and covering the first, second, third and fourth charges.

It must be that those charges were made in irnorance of the provisions of the specifications, since in paragraph 36 of the specification, it is expressly provided that: "The work of construction will consist of brush "mattresses loaded with stone." Thus it appears that every bidder was given direct notice of the general character of the work to be done. As the second and third designs refer exclusively to brush mattresses and as the undisputed testimony is that the cost of building mattresses under those designs is about the same, it is evident that each contractor in making his bid knew exactly how to

make up his estimate. Indeed I am satisfied that if the attention of any one had been called to this paragraph he would have admitted that the specifications are clear on this point and that no bidder, even if distant, could have been deceived. But additionally, three designs of mattresses were called for for the reason that while Number 3 was to be used generally, a very few of the others might be needed, which could then be required at no extra cost to the United States, and without any trouble. As a matter of fact, there is very little, if any, difference in the cost of construction under any of these designs, as is shown by the testimony of engineers and experienced contractors familiar with mattress work, but in order that there should be no misunderstanding whatever it was explained fully to every bidder that mattresses of the third design only would be used, those of the first and second, if used at all, being very few in number. As all the bidders thoroughly understood this point and made their bids on the design actually used, the charge that the government lost the difference between an expensive and a cheap design has failed of proof, the fact being as shown conclusively by the statements of all the parties who bid on the work not only that the cost of each design is about the same but that they based their bids on the design actually used, and which they were informed was intended to be used. The contract was made on that design. Reference is made to the testimony of Lieut. Rees (P. 622), Mr. Rutherford (Page 533), Mr. Stewart (Page 401), of Mr. Ely (Page 419), and to the letters and affidavits of Mr. Friday, Mr. Ross and others appended hereto.

Referring to the question propounded to me before the Board, if a bidder were to make a contract under the specifications, what guarantee would he have that I would not require him to use single course log mattresses, and to my reply thereto that he would have no guarantee except my honor, it may be well to state that this question and reply and the entire discussion on that subject are pertinent only on the theory advanced by the prosecution that the specifications were faulty and that the bidders had to rely merely upon my statement. As a matter of fact, however, the projects contemplated brush mattresses generally, and the specifications expressly provided for brush mattresses, and when I drafted the specifications my idea was perfectly clear that only such mattresses were to be used, except in the limited quantities heretofore referred to. Every bidder and every one contemplating bidding knew thoroughly that mattresses of the third

design would be required and the prices actually bid were on that basis and the contract actually entered into was for such mattresses. Hence it is that on the basis of actual facts and not on the criticism of the prosecution the existing contract does not rest on personal guarantee but is absolutely binding on both parties to it.

The charge that the fascines used were nothing like those contemplated in the specifications and that the mattresses used were like none of the designs given, but that a mattress enormously cheaper was used without any reduction in price is based in main upon the testimony of Mr. Cooper, Mr. Hale, Mr. Keating and the two Twiggs. At the outset it should be borne in mind that all these witnesses are interested parties, being at present employed by the government under the orders and influence of my successor.

Besides being furnished with a copy of the specifications, each inspector or assistant engineer was furnished with a copy of the regulations for the government of employes of United States Engineer Department in the District of Savannah. Georgia, dated October 1st, 1892, a copy of which will be found with the testimony and which regulations contain the following specific instruction,—

"The general duties of an inspector are to inspect and measure material and report whether the material and work are in accordance with the contract or not. * * * Mattresses will be first carefully examined and the inspector must satisfy himself they are constructed in accordance with contract before he accepts them for measurement." (Page 17).

In addition to these general printed instructions each inspector was ordered to see that all work was done properly and according to the specifications, so that he might be able to certify to the correctness of his report.

Referring to the testimony of Mr. Cooper, who cannot plead ignorance for the reason that in his letter attached to the original charges he claims credit for the magnificent result of the work done in Savannah under my administration, and who has been in the government employ for some years, it will be found that his statement substantially is that from the time he entered upon his duties as inspector or assistant engineer up to the time that I left Savannah in 1897, the fascines used in the work were not built in accordance with the specifications; that they were not trimmed, that they were simply piled merely as they were found with the leaves and everything left on them; that there was not much choking

done at all; and that they were just tied up as well as they could be; but that he believed they were satisfactory to me and that he was so told when he first came to the work, &c., and here in parenthesis it may be noted that he does not state to the Board who told him so.

In refutation of this testimony of Mr. Cooper, I refer to his written tri-monthly reports, covering the entire period of his employment as inspector or assistant engineer, in which he unqualifiedly reports that the mattresses were built according to the third design of the specifications, (Design 3.), which is conclusive on him that the fascines and mats were considered by him at that time as properly constructed. He attempts now to escape this conclusion by suggesting that his report meant merely a statement of quantities irrespective of the method of construction and he makes this suggestion in the face of his own admission, that he has at times in his reports recommended deductions from mattresses because they did not come up to the requirements of the specifications. It would further seem that if his evidence is to be accepted as truth, then he has wilfully and continuously deceived officers of the government. He had in his possession at the very time he was making his reports a copy of the regulations above referred to, in which as inspector he is expressly required to make examinations for the purpose of satisfying himself that the mattresses are constructed according to the contract before he accepts them for measurement. He made report after report that they were so constructed, and now says that such reports were false and untrue. These observations will apply with equal force to the testimony of the other inspectors. The statements of the two Twiggs may be understood when it is remembered that a brother of Marion Twiggs is the dissatisfied contractor who did some work on the Savannah River near Augusta. Further respecting Mr. Marion Twiggs, it may be stated that in his written reports made up to the time I left Savannah in July, 1897, he avers that the mattresses were "brush mattresses of the third design," which is what is called for by the specifications. In this connection I desire to invite special attention to a letter of Mr. Marion Twiggs, addressed to my successor, dated October 3, 1897, several days after the session of the Board at Savannah had closed, which letter is in evidence. It will be remembered that in his affidavit submitted to the Board this witness swears: "That in none of

the cases with which he is familiar have any mattresses been constructed in accordance with any of the three designs described in the specifications." In the letter referred to, which purports to be an answer to a letter from my successor of October 2nd, he says: "I believe that the mats sunk at Cumberland Sound were" (and then follows in quotation "mats of the third design modified by the Engineer officer in charge." He does not give the source from which this language was quoted. He then goes on to explain, "In order to explain this modification I inserted the word "brush" over the "third," the mats being built out of bundles of brush and not out of fascines," followed by the astounding statement: "When I stated this I had not read the specifications for Cumberland Sound mats." Here, then, is a man who signs himself Assistant Engineer, admitting that he made false official reports and that when he made them he had not read the very specifications by which alone he could determine whether the work was properly done. His flimsy and scandalous excuse that, "I believe my report suited Captain Carter as well as the mats did," speaks for itself and does not relieve him. Again he seems to think that there is some peculiar significance in the word "brush," whereas if he had read the specifications and the printed rules furnished to him for his guidance he must have known that the construction was to be of brush mattresses.

Since giving his testimony, he (Referring again to Mr. Cooper), has also been given an opportunity to explain his report, and so he also writes a letter to my successor, dated October 3, 1897, purporting to be an answer to a letter from that officer of October 2nd, in which he says that the word "third" was filled in under the heading "design of mats" because "that was the form of the report given me to fill out." "I did not mean to state by the words 'third design' that all the details mentioned in paragraph 37 of the specifications were carried out." (He evidently considers the construction of the mats a detail). "In fact, my understanding of my signature to all of these reports is that they were correct according to the directions given me by my superior officer, and that the specifications were only used in the absence of more explicit instructions," and here again it may be noted that nowhere in the testimony does he state that I gave him any more "explicit instructions." This is the same man who, on page 27 of the official testimony, states that he was ordered by Captain Carter to report as right something which he

knew to be wrong and that he declined to do it because "I would be certifying to something "that was not so, and yet, when asked in another place whether, if instructed to do anything wrong he would resign or do wrong, answered that he would do wrong (Page 47). And this is the same man who admits that a complaint to Captain Carter as to deficiencies of the contractors would be effective (Page 26). That if an inspector accepted any favors of the contractors he would not have Captain Carter know it (Page 50). That he received instructions from Captain Carter to show no favors to the contractors, which instructions were never modified (Page 47). That the fascines were not up to the specifications, but that he never saw a military fascine before my successor took charge (Page 44). That whilst in 1889 he began to suspect Captain Carter was doing wrong (Page 54), he yet accepted service under him again in 1893, and in the same year declared to Mr. Brown that the contractors were being held closely to the specifications without favor, and that good work was being done, which statement he reiterated in December, 1894, to Mr. Brown. This is also the witness who volunteered the political information that Captain Carter "has yielded to temptation and probably allowed the contractors or a particular contractor to do as he liked in exchange for their influence and power to boost him along;" and when asked in what manner they "boosted" him along, stated that they helped him to get the appointment on the Nicaragua Canal Commission and that to them he owed his appointment to London. In all fairness, I ask what credence can be given the statements of this star witness of the prosecution? He admits his official reports were false; that he paid no attention to the construction of the mats, but did make deductions because they were not properly constructed; that my instructions were to see that the specifications were fully carried out, and that these instructions were never modified. He says he disobeyed those instructions. He told me and others the work was properly done. He says now it was not. He says he would do wrong before he would resign. It is entirely possible that fear of a request to resign has led him to testify as he has. He contradicts himself, he is contradicted by others, and by his own report; and before dismissing this witness, it may be worthy of observation that Mr. P. E. Twiggs testifies that he is a liar (Page 8).

But additionally, the testimony of these assistants and

inspectors is further discredited by the fact that, in addition to reporting to me, they have admitted again and again to responsible parties during the progress of the work that it was well done and in accordance with the contract. The Editor of the Fernandina Mirror who was inquiring constantly after the work at Cumberland Sound, testifies that Mr. Twiggs said "the work was progressing well, &c.," and the President of the Board of Pilot Commissioners, who was often at the site of the work, testifies that Mr. Twiggs stated to him that the "work was being well and properly done, according to contract, and that the jetty was doing its work and standing well" (See affidavit). Mr. Gammont testifies to having heard both Mr. Twiggs and Mr. Cooper report to me that "the work was being done properly and according to the specifications," "the mats were being built properly, according to the specifications," and that Mr. Twiggs reported that the "mats were standing up all right without any change, and that the sand had filled up to their tops, that the work was in good shape, &c." (See affidavit). Mr. Laird testifies to having heard Mr. Cooper report to me that "the contractors were doing the work according to the specifications, &c." (See affidavit.) Mr. Brown testifies that Mr. Twiggs stated that it was not considered necessary to have an inspector there (at the mat camp), and that "as far as the mattresses were concerned, the contractors were obliged to build the mattresses better than the specification demanded" (Page 42).

At this point, permit me to say that I do not desire the Board to infer that I would have them believe that all of these men are perjured witnesses; not so; I appreciate too highly the embarrassing position in which they found themselves placed and, with the exception of Cooper and the two Twiggs, for whose unworthy conduct I can find no apology, I am not inclined to judge them over harshly.

Informed that the fascines and mattresses as built by them for years past had not been in accordance with the specifications and being shown a mattress of a design with which they were not familiar and instructed that this and this only was the design the specifications called for, it was not unnatural that they should have hastened to assure my successor that former work had not been done in accordance with the specifications, and not wishing to take the risk of bringing trouble upon themselves, their escape was by placing the responsibility elsewhere.

On the other hand, the evidence is overwhelming, that the fascines and mattresses were well and thoroughly built and were in accordance with the specifications as interpreted by the Engineer Officer, by the bidders and intended bidders, by the contractors, by inspectors, and in fine, by everybody in any manner or form connected with the work.

Mr. R. F. Ensey, a graduate of Johns Hopkins' University, and a man of considerable engineering experience, at present occupying a position of importance in Florida, and who was an inspector on the work in Savannah Harbor for some time in 1892 and 1893, and at the time during which the alleged change of method in construction was made—This gentleman testifies that the fascines were properly choked and made according to the specifications. (Page 152 to 168.) That the mattresses were also made according to the specifications (Page 150 to 175). He further testifies that every inspector had orders to see that the specifications were properly carried out and that they all understood this. (Page 156.) That work not done properly by the contractors was replaced at their own expense. He further testifies that any minor changes made in accordance with the provisions of the specifications were all for the benefit of the United States. That if a mattress fell below the requirements of the specifications, it was not sunk, and that the work generally was properly done in every respect (Page 155). This witness further states what is known to every intelligent engineer having experience on this class of work, that any proper examination by an inspector would reveal any material imperfections in the mattress, thus showing the usefulness of putting regular inspectors at the mattress camp. Mr. Brown, a capable engineer of experience, also testifies to the same effect (Page 43). I refer also to the testimony of Mr. J. T. Daniels, who has been employed at Savannah Harbor since 1882, and who has been an inspector on mattress work since about 1893. It seems that Mr. Daniels stated in a letter dated August 8, 1897, that the mattresses "were not build according to the specifications," but it appears that this statement was made by him based on incorrect information, for he testifies that that letter was brought about by being informed "that only mattresses constructed according to instructions given since Captain Carter's departure were in accordance with the specifications." It is not to be marveled at that he wrote this letter when it is remembered that even Mr. Cooper had never

seen a military fascine prior to the time of the advent of my successor. Mr. Daniels positively testifies that the fascines built under Captain Carter's administration were built according to the specifications, were properly choked and were built as well at the close as at the beginning of the work. He also states that the changes in the method of construction were not of any advantage to the contractor. He further says that the mattresses built by Captain Carter were in accordance with the specifications and that they were better adapted to the work for which they were intended than the mattresses built by his successor (Page 199). Mr. Daniels also states that there were general instructions to inspectors to have all work done according to specifications (Page 189). That if any inspector had done anything improper he would have been discharged (Page 190); that he never heard an intimation to the effect that the work was being done improperly (Page 192); and that deductions were made of all mattresses not properly built (Page 195). Lieutenant Rees, of the Corps of Engineers and who was my assistant from 1889 to April, 1893, states that he has been in the mattress camps and on the works and is thoroughly familiar with the work carried on, and who testifies that the fascines were properly choked (Page 636); that the type of mattress used does not differ from the method mentioned in the specifications and that it does not differ materially as to cost (Page 633). Mr. Burnett, who was one of my assistant engineers on the work from 1892, and who has had a most extensive experience in the construction of fascines and mats, testifies that the mats and fascines were well and properly made. (See affidavit.) Mr. Brown, who was also one of my assistant engineers, testifies without reservation that the fascines and mattresses were all properly built in accordance with the specifications; that the construction was as good in 1897 as formerly (pp. 39, 40, &c.). The superintendent and foremen of the Atlantic Contracting Company, who actually did the work, all swear that the fascines and mats were well and properly made and were in accordance with the specifications (See affidavits), and here it may be remarked, that all of these witnesses testify that the fascines and mattresses were built just as well at the close of the work as at the beginning, and that there was no deterioration in the construction thereof. At this point I would observe, that the specifications for constructing any work are intended as a guide both for the engineer and the con-

tractor, and the work desired to be done under the specifications in my district was understood so clearly by everybody connected with the work that never during the thirteen years I was engaged on this work was there any question not perfectly and thoroughly clear, and no method of construction followed which was not in accordance with the contract and understood by every one having any connection with the work. The specifications permit mattresses to be sunk in single courses, each course weighted with stone. That method was tried in 1892, was found to be improper in Savannah Harbor and would, if carried out, have increased largely the cost of the work to the United States and would have prevented the successful completion of the project of improvement. The specifications, however, were drawn with the view to provide for such contingencies, and state distinctly "that the United States reserves the right to make such alterations in the detail of construction or material as may be deemed best during the progress of the work, provided that should such alterations materially vary the cost of the mattress, the price to be paid shall be increased or diminished proportionately, such change of price being agreed upon before the alterations in the mattress are made." It is thus seen clearly that any alterations in detail of construction or material which do not materially vary the cost not only do not need any special agreement or supplemental contract, but that such work is in strict accordance with the specifications. Moreover, the method of constructing the mattresses were well known to the Division Engineer and to the Chief of Engineers, both of whom, as I have reason to believe, were as well satisfied with the success of the change as I was myself. I may be permitted to mention one incident in detail: In about the summer of 1894, M. le Baron Q. de Rochemont and M. H. Vétillart came to Savannah, bringing a letter from the Chief of Engineers. One the day of their visit a large multiple mattress, composed of several mattresses, was sunk successfully. They expressed themselves as much pleased with the method, which was novel to them, of building many mattresses together on top of each other and sinking with a single load of stone. The method of work was explained in detail to them and the experiences of that day were related in detail by them to the Division Engineer and to the Chief of Engineers, both of whom expressed themselves as gratified with what I had done. The method of construction was also ex-

plained during the progress of the work in June, 1895, if I remember, to the present Division Engineer.

To attempt to justify the allegation that enormous profits enured to the contractors from the alleged modification of the specifications in the construction of mattresses under the contract of 1892, estimates of cost of construction have been submitted by the prosecution, namely, those of

(a) Mr. Gieseler,

(b) Mr. Cooper, Mr. Hale and Mr. Keating,

(c) Captain Black and Captain Gaillard.

In order to discuss this subject intelligently, it is necessary to define precisely the style of mattress which each man had in mind at the time he made his estimate. It would seem that Mr. Gieseler's estimate is based on purely imaginative and theoretical premises and is exceedingly inaccurate, as is illustrated by his figures on a log mattress, wherein he assumes that one hundred logs of not less than twelve inches average diameter can be laid side by side in a space seventy-five feet in length. His other estimates are of equal value. The estimates of the inspectors are made on the assumption that the fascines and mattresses used in the work were improperly made, or in other words that the work was bad and their estimate is to demonstrate the cost of bad work. The Engineer Officers reach their conclusions by assuming conditions which did not exist.

(a) Further comment on Mr. Gieseler's estimate is unnecessary. This man had charge of hydrographic surveys and office work and has had no practical experience on any of the works of construction, and his estimates are of no value whatever.

(b) Regarding the estimates of the inspectors, it may be stated that Mr. Cooper has not seen mattresses built. Mr. Hale was employed usually on surveys, and Mr. Keating, while sent once to the brush camp, and who reported that the work was so well done that he had worked himself out of a job (p. 180), is a boatman, whose education is not sufficient for him to have written the letter to which his name is signed. A further analysis of these estimates would result in no possible elucidation of the question of cost, unless it be further assumed that in addition to authorizing the alleged modification Captain Carter further directed or connived at bad work,—or in other words, the Board is asked to believe that he not only allowed the contractors by an unauthorized modification of the specifications to pocket thousands of dollars at

the expense of the government, but had so little regard for his own reputation that in order still further increase these enormous profits he was willing to risk the entire success of the work itself. Any such assumption is merely gratuitous and there is not a scintilla of evidence in the record upon which it can be founded. As a matter of fact, the inspectors all testify that they received no instructions to accept bad work, and yet if the fascines were constructed in accordance with their statements, namely, that they were piled merely as they were found, that there was not much choking done at all, then the work was bad and so bad, indeed, that it would not have answered for the purpose intended, and it could not have escaped detection. In passing, I would point with amusement, were it not a serious charge, to one of the items in the so-called estimate of Mr. Cooper, namely, "Lobbying River and Harbor Bill through Congress, $25,000". No further comment is necessary.

(c) With respect to the estimates of Captain Black and Gaillard, I have but little to say. Those gentlemen obtained their information as to the character of the mats put in the work at Savannah and Fernandina from statements submitted by my successor and hence based their estimates on false data. Such being the case, assuming their reasoning correct, the conclusions must of necessity be incorrect and of no value. Taking a true description of the mattresses as actually constructed, Lieut. Rees estimates the cost at about eighty cents, Mr. Brown estimates the cost at eighty-six cents, Mr. Burnett at 81c and Mr. Daniels at from seventy-five to eighty-five cents, and Mr. Laird, at eighty cents per square yard.

Speaking generally, it is the experience of practical engineers and contractors that it is impracticable and almost impossible to arrive at estimates of cost in work of this kind with any considerable degree of exactitude. The varying conditions and elements which of necessity enter into the estimates are so many that figures in a large measure are merely theories. The location, the extent of the contract, the season of the year, the exposure, the risk of the elements, the cost of the plant, the experience of the contractor, the character of the labor and material, all these and many others are potent factors to be taken into consideration in making an estimate of cost; and hence, it is that it is so often found that no two experts will reach the same conclusion, and that the contractors themselves, in bidding on a work, differ ma-

terially in their prices. The record in this case gives ample illustration of this. Mr. Gieseler estimates log mattresses at about twice the cost per square yard of brush mattresses, while Captains Black and Gaillard estimate that the cost of the log mattress is much less per square yard than that of a brush mattress, and then come the contractors who for the most part are of the opinion that there is no material difference in the cost of brush and log mattresses. On the theory, however, that some importance may be attached to the estimates and opinions expressed by the witnesses for the prosecution on the cost of mattress work, I respectfully refer the Board to the estimates of Lieut. Rees, Mr. Brown and Mr. Burnett. I also refer to the affidavits of Captain Laird, Mr. Daniels and experienced contractors, competitors of the Atlantic Contracting Company and men who have done nearly all of the brush mattress work on the South Atlantic Coast and who know the cost.

Two of these men have done work both at Mayport and at Fernandina, and have furnished direct comparison of the cost of similar work at those two points. Mr. Ross, who did the work at Mayport under Captain Black, testifies (See affidavit) that the fascines at Fernandina were properly built and like those built by him at Mayport; that the mats at Fernandina were as well built, but cost a little more than at Mayport, on account of being in courses, and that in addition it cost ten per cent to twenty per cent more to do work at Fernandina than at Mayport. Mr. Ross is an experienced contractor, in whom Captain Black testifies he would have confidence, and Mr. Ross knows better than any other man the relative character and cost of the work at the two points. From all of the testimony, it is seen that no mattress of any character can be put into those works for less than sixty cents a square yard except at a loss. (R. Moore), and that the real cost per square yard of the mattresses actually constructed and used varies from sixty-five to ninety-five cents per square yard. These witnesses are all practically unanimous on one point, and that is, that there is no material difference in the price of constructing and in sinking them as they were actually constructed and sunk as allowed by myself. But more potent than this direct testimony is the incontrovertible fact that every bidder or proposed bidder on the work under the contract in 1896 all aver that they were fully advised that the mattresses to be used in the work under these contracts could be built and sunk as they had formerly

been built and sunk under the contract of 1892 and 1894. Not a single responsible party has come forward to testify that it was not thoroughly understood by the bidders that the mattresses could be built and sunk in courses. The allegations made by my successor that the specifications require each mattress to be sunk separately with rock on each layer, but that many were sunk at once, thus permitting an enormous saving, none of which accrued to the United States, is an error.

The only language of the specifications referring to the method of sinking, is as follows:

"No mattress will be accepted until properly placed in the works and secured there by a layer of stone of such thickness not exceeding one to two feet as may be required by the Engineer Officer in charge."

This language not only expressly permits the Engineer Officer in charge to sink a mattress without stone if he desires to do so, but to sink in any manner desired, either singly or in courses, depending on the depth of the water.

It was so worded with that very object in view, and to avoid giving an advantage to the Company owning the patent for sinking multiple mattresses, and as has already been demonstrated, every bidder understood this and the prices submitted by all the bidders were on that basis. The sworn statements of the bidders and the testimony of prospective bidders shows that the method was thoroughly understood, there was not and could not have been any loss to the government or unfairness to any bidder.

It is alleged that the fourth class stone used in the works is not the stone contemplated by the specifications, and it is insinuated that I arranged the specifications designedly that I might either accept or reject Florida stone. The insinuation is unqualifiedly false. On this point I would state that it is quite possible that a great deal of the Florida limestone has a specific gravity less than 2.4. Those figures were inserted in the specifications by me under the following circumstances:—is only within a comparatively recent date that stone has been discovered in Florida, but as soon as its use was begun it was found to be far better for Harbor work on the South Atlantic Coast than granite; first, for the reason that being lighter it does not sink so much into the sand or mud; second, being porous the grown of barnacles is facilitated, light riprap stone being converted in a short time by shell growth into a monolith. A piece of this limestone was

sent to a chemist in Savannah with instructions to determine its specific gravity, and the figure given by him was inserted in the specifications, not with the idea of determining the specific gravity of all rock used, but because the sample was like what was desired, because it was believed that the average of the stone would be about that weight, and because it was not desired that Florida stone should be specifically mentioned in the specifications, which would have been unjust to the stone of other States. That Florida stone was desired was undertsood, not only by me, but, as the record shows, by every one who took the specifications or who contemplated bidding on the work, and it is the uncontradicted evidence that the prices bid by the contractors for fourth-class stone was based on supplying it from Florida.

Further, if the determination of the specific gravity be an error, as is alleged, the actual sample should govern and not the figure in the specifications. Captain Abbot in his testimony supports this view. (Page .)

As to the Second Head.

(a) It is alleged that a written order for a certain load of stone on mattresses in Savannah Harbor was countermanded orally, thus permitting the contractor to sink his mattresses improperly. This allegation is not only false but the slightest investigation would have demonstrated that it was false. The only testimony which would lend any color to this statement is that of Mr. Cooper to the effect that I orally countermanded my order to Mr. Daniels requiring two hundred yards of stone. This statement of Cooper's is false. What I did say is, that on account of exposure and difficulty of sinking mattresses as compared with stone, the mattresses might go down with less than 200 yards of stone, but that they were at the contractor's risk until the 200 yards were put in. This Mr. Daniels understood and he testifies that I did not order the change as alleged by Mr. Cooper, but gave the instructions quoted above, and that it was those instructions that he repeated to Mr. Cooper (Page 194), and not the garbled and false version given by Mr. Cooper and used as evidence.

(b) It is alleged that the cost of mattresses per cubic yard at Cumberland Sound is $13.69. I am unadvised as to whether this statement is intended as a criticism on my work as an engineer or as an insinuation of improper conduct. The charge purports to be based on a letter from Marion Twiggs of August 15th, 1897, transmitting a profile of a part

of the north jetty at Cumberland Sound. As to the falsity or truth of that profile I am not informed, but I respectfully refer to the various profiles transmitted to me by the same assistant, a blue print of all of which is filed with the record; from one of these it is to be seen that the cost per cubic yard is only $3.07 per cubic yard. This same Mr. Twiggs reported to me orally again, and again, the last time about June, a settling into the sand of about two feet for each mat, but no compression, and that the entire mattress courses were sanding to the crest. That condition was exceedingly gratifying to me and although the cost per cubic yard was large it was so much less than stone, where the subsidence would have been so great as to have increased the volume enormously, that it was satisfactory. Moreover the commerce of Fernandina was seriously interfered with by the unsatisfactory condition of the improvement due to the lack of necessary funds for prosecuting the work. Following the extension of the north jetty a new channel began to open exactly where desired, and to hasten that by the quickest method possible further mattress construction was necessary.

(c) It has also been charged that the amount of mattresses used in canvassing bids was largely increased where Gaynor, Bangs, the Atlantic Contracting Company, Walsh or Ely were the contractors, and decreased where Twiggs was the contractor. As to this I have to say, in 1892 it was contemplated to use a certain amount of mattresses in Savannah Harbor. When the training walls were begun scour developed along their faces and it became imperatively necessary to stop that, which could only be done by brush mattresses. That method was economical and perfectly successful, but it increased largely the quantity of mattresses. When the work on the mattress training walls proper began the subsidence was so great that the total failure of the project of improvement for anything like the estimated cost was threatened, and it became necessary to devise a method of holding down the mattresses with less stone, which method, after long and perplexing trials, was successful. This change resulted in a saving to the United States but, of course, again largely increased the amount of mattresses. Again, near Pulaski, the bottom was soft, the pressure of water against the training walls was great and it became necessary to provide a wide structure. The shell growth was so rapid at that point and the silting up so satisfactory that it became possible to use mattresses there also, thus insuring the suc-

cess of the work but again increasing the quantity of mattresses. All former work in Savannah Harbor was in connection with spur dams and not in connection with training walls. Hence data from actual experience as to settlement that might be expected under those conditions were not in existence. At this point I desire to remind the Board that even under those conditions the work at Savannah was completed within the original estimate of cost and is successful. What might have resulted under other unknown, speculative and theoretical methods of construction, no one can tell. As the work progressed changes in quantities became necessary. Had the quantities of all materials been increased in the direct ratio indicated by the specifications, the cost to the government would have been increased and the work could not have been completed within the original estimate of cost. I invite the attention of the Board to the fact that such a condition is not new in the engineering profession.

At Fernandina under the present contract, it was feared that the sand would not follow well and the quantity of mattress work first thought necessary in making the project was reduced by me in preparing the specifications, but on statements from my assistant engineer that as the work progressed it was standing up well and covering with sand to its crest, and desiring to hasten the opening of the channel between the jetties, the mattress work was increased as provided for in the specifications.

No man living is wise enough to tell within anything like exact limits the absolute or even relative proportion of material necessary on a sandy coast like this, and the specifications hence provided for such changes in quantities as might be found necessary. It has been suggested by several members of my Corps who have testified in this investigation, that it might have been safer for me if I had executed supplementary contracts covering increased quantities. This suggestion would be a proper criticism if I had had any reason to believe that by means of such contracts I could have secured anything to the government but under the existing conditions I felt then, as I do now, that I acted for the best interests of the government and I had every reason to believe that my action received the emphatic approval of my superior officers. These increases were reported monthly in writing both to the Division Engineer and to the Chief of Engineers and were spoken of in talking over the work with them and with any of my brother officers whom I chanced

to meet, and it did not occur to me that I was exceeding the latitude permitted me under the contract. The testimony relating to the relative profits on mattresses and stone at Fernandina of Grimm, Stewart, Friday and others, experienced contractors, competitors, and hence disinterested men, is proof that the increase was not for the benefit of the contractors. As to the statement that when Twiggs was the contractor the quantity of mattresses were decreased it may be well to say that Twiggs is the only man other than Gaynor, Bangs, etc., who has had a contract in this district since 1892, involving the use of mattresses; on that occasion proposals were asked for 7,500 square yards of mattresses and 7232.04 square yards were actually used. In the previous contract at the same point the contractor was John F. Gaynor. Proposals were asked for 7500 square yards but only 4861.4 square yards were actually used, a far greater decrease than in the case of Twiggs (See annual reports of Chief of Engineers). As to the charge that Twiggs lost money, that is entirely irrelevant. He was given opportunity to do the work well. The inspector Conant testifies that he did not take hold of the work with the right motive (page 102) and that his financial standing at the end of the work was about the same as when he began (page 111). The statement that the inspector received instructions to be hard on Twiggs and easy with Gaynor is absolutely false. The inspector admits that he was instructed simply to carry out the work as it was possible on the coast (page 108) and that it would not be possible to do as close work on an ocean bar as in a river (page 113).

(d) It is alleged that in my specifications for Savannah Harbor, 1896, I called for 200,000 square yards of mattresses, and that I later stated that new soundings showed that 300,000 square yards of mattresses would be required, but that no such soundings were taken. The statement that no such soundings were taken is not true: They were made along the site of the Breakwater where the mattresses were sunk in December, and learning from such new soundings that the mattresses did not stand up as high as I expected, the estimates were changed. The soundings referred to were not in the nature of a regular survey, were not located instrumentally and hence were not plotted.

(e) It is alleged that in my discussion of the inside route to Beaufort I made statements which must have deceived the Chief of Engineers and were intended to do so. This

charge is so glaringly false that I find it impossible to imagine why it was ever made. In discussing the various routes the old one along the Jones Island was not mentioned by me because no intelligent engineer familiar with the locality could consider it desirable. It was desired on account of its shortness by some steamboat men who knew nothing of engineering. My statement, "that nothing has been dumped in the steamboat channel back of the Long Island training wall" is true, and hence was not only not intended to deceive any one but could not have deceived any one. Careful orders were given to keep the old route open and no material was permitted to be dumped where it would interfere with it. It was dumped back of the training wall but not in the channel. (See affidavits of recorders of dumping, appended hereto.)

The statement that the old route "is shoaling and the shoaling has been hastened by the construction of the works of improvement" is true, but my successor's insinuation that enormous amounts of dredged material were being dumped into the channel is untrue, as is also his statement that two dumps were made on February 29th, 1897, where the tide would carry them into the channel. (See affidavit of Rossiter, the recorder of dumping of that date.) Had such dumping ever been done it was contrary to orders and would certainly have been known.

(f) My successor alleges that in a communication to the Chief of Engineers concerning Hutchinson's Island I stated that "people had been buying up lots for the purpose of charging exorbitant prices, etc.," and states that an examination shows that no lots have changed hands recently. As a matter of fact I did not make the statement alleged and my language has therefore been falsified. What I did say is that (as will be seen by reference to my letter-press book) excessive rentals were demanded by property owners, some of whom had taken possession of wharves as a speculation. At the time I made that statement and from the information then before me I believed it be true, nor have I now any reason for believing otherwise. Regarding motives, however, I may have been in error.

(g) It is also alleged that I put in and paid for piles which were of no use whatever except to the contractor, the inference being that I intended thereby to defraud the government. In my statement to the Board I said that as I remembered I required certain piles to be put in at the

North Long Island training wall for which payment was made to the contractor. I find upon examination of the records that I was partly mistaken. While all piles after February 8th, 1894, were put in by my orders for the benefit of the United States, those put in before that date, 375 in number, although for the benefit of the United States, had already been put in without previous orders, and Mr. Cooper states they were put in at the contractor's request. Whether this assertion be true I cannot now remember, but I do know that the piles were necessary not only to mark the wall but to protect it and the small boats navigating the river, some of which had been upset and injured and the crews placed in danger of drowning, and for that reason and because the piles were put in properly they were paid for at a reasonable and just price, viz., the contract price. At the Cockspur Island training wall they were further necessary to force the fascines into one another, and to make a tight job of the double mattress work.

(h) It is alleged that many articles were improperly charged on pay rolls and that rolls and vouchers were improperly signed by me.

Until this investigation I never for a moment suspected that such a condition of things could have existed in my office. My first intimation was gathered from the testimony of Mr. Sterly, my former chief clerk. He stated to the Board that various articles were put on the pay roll, the amounts being added to the name of men thereon and in some instances that fictitious names were signed to the pay roll by him in obedience to my orders. That he did this is now an admitted fact, but that he did it with my knowledge or under my orders is a malicious falsehood. When I became a disbursing officer, I ordered that only labor or employment should be put on the pay rolls. At first these rolls were either made out or closely supervised by myself; later, however, when the amount of work I had to do had increased largely and when, as was often the case with busy men. I threw upon my chief clerk in whom I had the utmost confidence many of the minor details of my office, it happened that these rolls were made out by him, as I had every reason to suppose in the manner in which I had instructed him. In making articles for the office, for example, it was sometimes determined to buy the material and employ carpenters to make it into the form desired, rather than to ask authority for the specific purchase of the completed article. In such

cases instructions were given for a bill for the material to be submitted and for the pay rolls to be signed by the laborers who did the work, the foreman or dealer under whose instructions this work was done sending to the office upon the completion of the transaction a receipted bill for the entire amount, material and labor, as a check on the two divisions. It was supposed that these instructions were carried out strictly by my Chief Clerk, who informed me again and again that every thing was done properly, and whose statement to that effect I accepted as true. His statement that my instructions had not been complied with, that both material and labor had been put on the pay rolls, and that he had even signed thereto fictitious names, is the first intimation I have ever had that such a state of affairs ever existed, and his charge that such things were done in obedience to my instructions is absolutely false. The nature of this man, and the degree of credence which may be attached to any statements of his, may, perhaps, be illustrated by the following brief statement: In 1880 some officers of the Corps of Engineers took a fancy to this man who was then a private soldier in the engineer battalion and helped him along. When his term of enlistment expired I brought him to Savannah, took care of him and promoted him at last to be my Chief Clerk. He appeared to be devoted to me and I believed him to be truthful, honest and faithful to his duties. When I went away from Savannah I left everything I had in his charge; returning after an absence of only about a month, I find this man false to his trusts, untruthful as to his official acts, bringing up things which he did as my trusted clerk, declaring such things to have been fraudulent, and to have been known by him to be fraudulent at the time they were done, and stating that he had committed this crime at my instigation. A man who confesses himself to be a scoundrel and gives as his only excuse that somebody told him to be. In this connection I refer to the testimony of Lieutenants Rees and Burgess, both of whom testify that during their connection with my office at Savannah they became satisfied that they had every facility to obtain a complete knowledge of all papers connected with the office and to examine all the methods used in the office, and that they felt satisfied that all regulations in regard to pay rolls, vouchers and other papers were strictly carried out; and to the affidavits of my other clerks, who testify that my orders to this man were to

conform to the requirements of the regulations and that they have heard him assure me that my orders were obeyed.

(j) It has been insinuated by my successor that in my testimony in a certain case pending in the City Court of Savannah, entitled Brown vs. The Atlantic Contracting Company, I gave false evidence in favor of the contractors. In my testimony in this cause I stated that the stone which did not come up to the specifications was rejected and not paid for. My successor brings a letter from his Assistant Engineer, stating that very few deductions for improper stone were made during that period, claiming that that is evidence that rejected stone had been paid for. This statement or insinuation of his is absolutely false. The facts are that the stone below the specifications, so far as it could be ascertained, was thrown out by the contractor on the wharf, taken away or left on the cars so that he would not have to haul down on his barges stone which would certainly be rejected. The fact, if fact it be, that the rejections made at the work are small, demonstrates only that the contractor's rejections at the loading point have been properly made. (See statement of Edward H. Gaynor.)

(k) It is alleged that I established a harbor line at the quarantine station at Savannah for the purpose of compelling the city to sell rock to the contractor at low prices, and it is insinuated further that I recommended the removal of stone from certain government works in Savannah Harbor for the purpose of enabling the contractors to get the said stone. In support of this charge it has been stated that one of the jurors in the Brown case stated to him that my motives in establishing the harbor line were improper.

My successor says it is rumored that the reason of that order was to enable the Atlantic Contracting Company to purchase rock at a cheap price and force the city to sell it. When asked from whom those rumors came, he said that he had heard it from half a dozen different people, and when asked to particularize mentioned the names of Marion Twiggs and Mr. Cooper, whose untruthfulness has been established, and a member of the City Council, whose name he stated he had forgotten. When confronted with a list of the members of the Council he said that he did not mean the present Council, but that it was a member of a preceding Council who was also one of the jurors in the Brown case. I have submitted to the Board affidavits from all the jurors in the Brown case who expressly swear that this officer ap-

proached them to ascertain something about me, and the man from whom he obtained information relating to the quarantine matter, the Ex-Councilman, states on oath that he did not mean to give that officer the impression "that Capt. Car-"ter's action on that occasion was actuated by any improper "motive. Deponent did not make any such statement or "charge and did not intend to be understood as charging "Capt. Carter with any collusion with the contractors, in "that the quarantine station was required to be changed for "the purpose of enabling the contractors to purchase cheaper "the stone ballast there." As a matter of fact, the contractors purchased at a cheaper price stone not requiring removal than the stone referred to. (See affidavit of E. H. Gaynor.)

With regard to the insinuation that the object of having rock taken from certain wing dams in the Savannah River that the Atlantic Contracting Company might obtain stone therefrom, such statement could only be made in ignorance of the tidal conditions of the Savannah River, the facts being that work on those dams is necessary for the protection of the tidal prism of the Savannah Harbor, and that if any rock were taken from those dams the work done there would cost any contractor at least what the rock obtained by him in any other way would cost, and perhaps would cost him more.

(l) It is charged that I made an improper use of funds received from a man named Hirt. As stated in my testimony, this matter arose under the following circumstances; Mr. Hirt had the use of the snag boat to try to raise his sunken steamer, the Santee. He deposited money for that purpose. The boat was dropped from the government rolls and taken up on his private payroll, one copy of which was sent him as a voucher. The boat returned to government work, but the money deposited by Hirt was expended before she was fully equipped for such work again, and as he had the diving outfit I estimated that as a matter of equity the boat should go on his rolls again for the amount of $132.10, less a small sum of some $11.00 paid out by me personally. After some correspondence, Mr. Hirt sent a check for the money, and as the boat was not then working on the Ocmulgee River I tried to convert his money into government funds for that stream, but was unable to do so, so I ordered my chief clerk to hold the money so that when the boat went out again she could be dropped from the government rolls

and taken up on Mr. Hirt's private rolls until the money was exhausted.

In this connection, I may state that I find an error in my statement before the Board. I there said that as I recollect it Mr. Sterly told me that he had used some of the money in going to Patchogue in the summer of 1896. The money was not received until December, 1896. I remember distinctly that Mr. Sterly did speak to me about putting himself on the rolls and thus taking up the money, as he had done some work in connection with the Hirt affair, for which he thought he was entitled to extra compensation, but I told him this could not be done, but to hold the money so that it might be expended for Mr. Hirt's account at the proper time, and the vouchers sent to him as before. In the numberless details of my work incident to my hurried departure, this matter escaped my memory when I turned over my district, though I may say at that time I had such confidence in Mr. Sterly that even if I had remembered it I doubt if I would have done more than have instructed him to bring the matter to my successor's attention.

(m) It has been insinuated that I have had improper business relations with the contractors. In the course of my examination I was asked to explain several personal communications which my private papers in the possession of the Board indicated I had had at various times with Captain Greene and others. As those transactions occurred for the most part many years ago and had in a large measure passed from my mind, it was difficult for me to remember clearly the details and circumstances in each case, and this difficulty was enhanced by the fact that I had no access to my papers either before or during the examination, but was compelled to answer the questions entirely from memory. Since then I have been permitted to look at my records and have refreshed my memory, and the following statement will explain as nearly as I can recollect the nature of the relations existing between myself and these parties: On April 15, 1886, my brother borrowed some money from Captain Greene, its repayment being assured by me. Captain Greene had no interest then in any works under my charge. The entire sum was repaid January 4, 1888, with interest at six per cent. I have not now and never have had business relations with any contractor doing any work under my direction.

(n) It has been alleged and charged that I have sometimes absented myself from my station without leave: I

frankly admit that this charge is technically true. During short intervals I have been absent from my post without leave, but never secretly and never, so far as I remember, without making it known either to the Chief of Engineers personally or to some one in his office at Washington, and I desire to state further to the Board that my absences were never clandestine, were never intended to deceive and never interfered with the proper conduct of my duties. During these absences I kept in close telegraphic communication with my office, paying the expenses of these telegrams myself, and transacting all of my official business as thoroughly as if present. I never left my station when anything of importance was on hand, was never neglectful of any duty, and indeed I can truthfully say that I never for one moment believed that in taking those few days without permission I was doing anything to the detriment of the service or of the government.

(o) Underlying all the charges and allegations and running through this prosecution, is an insinuation that there has been collusion between the Atlantic Contracting Company and myself, whereby as compensation for permitting this Company to defraud the government I have received a money consideration. Because of this insinuation, my private papers have been dragged before this Board and my private transactions with my father-in-law Mr. Westcott have been pried into and indeed I may say every act of my life for the past thirteen years has been laid bare. In view of the testimony I might well take the position that the charge that by any act of mine the contractors were enabled to make thousands of dollars at the expense of the United States, having failed, I do not conceive that I am called upon to explain my private and personal business affairs or those of others entrusted to my care, and especially is this true when the records show that there is not the remotest ground for believing that there has been any improper relation existing between myself and the contractors. Yet, as this Board have deemed it best in their wisdom—(and right here let me say that I have no objection to their course)—to investigate this insinuation, I have frankly placed at their disposal for their private examination my private papers and the papers of others for whom I was and am still a confidential agent. I have not hesitated to give to the Board every detail of my private life so far as I could remember the same and so far as I am able, and I will now solemnly

declare that I have never received directly or indirectly from any member of any firm or corporation or from any individual doing work or interested in work done under my direction either pecuniary or other benefits of any kind whatsoever. My relations with several of the contractors who have done work under my charge have been friendly, and I have spoken and written to them personally concerning various matters, yet I am not under any obligation to any one of them and never have been, other than such social obligations as may properly exist between honorable gentlemen and friends.

Like many other men not actively engaged in business and with little knowledge of affairs, I kept my private accounts loosely and in a manner perhaps almost unintelligible to any but myself, but as these matters were purely personal to my father-in-law and myself, and were never intended for the public eye, even in the light of this investigation I am not convinced that there was any necessity for a different system. With regard to the sums of money which I have had at my disposal, I have stated to the Board the source from which they were received, and Mr. Westcott's letter confirms that statement. As to Mr. Westcott's private matters, I have but little to say. It would not be becoming in me and I do not believe that the Board would desire that I should undertake, even if I had the information, to give to the public Mr. Westcott's affairs. I have stated to the Board that the moneys which I have invested and expended during the past few years belonged to him and that to him alone was I accountable for the disposition thereof. Mr. Westcott has substantiated this statement of mine, and there is no conceivable view upon which investigation can be pushed beyond this point. I apprehend that the Board will not consider that an exposition of my expenditures will elucidate any transaction which it may be insinuated I have had with the contractors. If I had denied that I had had considerable sums of money at my disposal, proof that I had expended large amounts might be introduced to show the falsity of my statements, but I admit the possession of considerable funds and have shown conclusively the source whence they were received, so it matters not how I have expended the same. I have submitted to the Board, in corroboration of my averment, the several powers of attorney given at various times to me by Mr. Westcott, authorizing me to transact business, and the accounts before the Board also corroborate this statement

in every respect. An examination of these powers will indicate to the Board the close personal relations which existed between us and the peculiar and touching confidence which this old gentleman reposed in the husband of his deceased daughter. Although I have been able to produce only that part of one of these trust accounts which stands in my name, I will call particular attention to the letter of those gentlemen which states, that the transactions shown on the very account as well as all other transactions I ever had with them, either as attorney or personally, were actually for Mr. Westcott and on his account. (Letter of Reed & Flagg.) I know not whether this Board know Mr. Westcott or whether they have informed themselves as to his character, his means and his personal standing, but if they have not and desire such information, I beg to refer them to Mr. Cornelius Vanderbilt, Mr. Chauncey M. Depew, Mr. Samuel Sloan, and others.

In conclusion, I desire to remind the Board that the work which has been subjected to the criticism of my successor and his subordinates represents the labor, the hopes and the ambition of thirteen of the best years of my life. I could not but feel a natural pride in the success which my judgment instructed me had been attained as it developed to completion an estimate in which I had been constantly reinforced by the kindly expressions of my Chief and my brother engineers, and what seemed to be the enthusiastic appreciation of the people of Savannah. From time to time and on every hand the results attained in the deepening of the river have met with the most cordial recognition by the people in whose commercial interests the work was projected. Not only from the lips of the most prominent citizens, but from their official representatives and from the commercial bodies which are in closest touch with their business welfare, this recognition has been pronounced and unqualified. I could not learn without concern from the testimony of my successor that my management of this undertaking had received the condemnation of prominent citizens of Savannah, a statement which he has since been forced to limit to a single citizen who, in his opinion, is prominent enough to voice the sentiment of the entire community in which the work has been done. I have exhausted every effort to have him acquaint me with the name of this person, going to the extent of requesting the senior officer of this Board to instruct him to disclose his name, and yet, notwithstanding he has been authorized by that officer to grant my request, he still declines to do so, and so this investigation closes and it has been

recorded that for the first time in the history of the Engineer Corps, a charge is made affecting the honor of a brother officer based on the statement of a man whose name even is kept secret. With this I contrast the reports of the Cotton Exchange of Savannah and the Board of Trade, bodies including in their membership all of the prominent and representative merchants of that city (appended).

Finally, it is conceded that in the midst of the anxiety incident to the great work with which I have been connected, striving on the one hand to justify the government in the liberal appropriations which it has made, and on the other, to urge to a speedy and permanent fulfillment the undertaking which so nearly concerns the commercial future of Savannah, I may have left to others too many of the details, the personal administration of which would only have delayed and obstructed me in the greater and more important features of the enterprise. But it is inconceivable by any candid mind that with my aims and hopes and ambitions I could condescend to the petty basenesses which are alleged against me. Surely, I can hold with assurance against such assaults the record of an honorable life and faithful service!

Thanking the Board for their attention, it is with all confidence in the justice of my cause, that I commit my honor to their hands.

O M Carter
Capt. Corps of Engr U S A

(Endorsed) Office, Chief of Engineers War Department, Nov. 13, 1897 22530/70

APPENDICES TO CAPT. CARTER'S FINAL STATEMENT, OCT. 23, 1897.

AFFIDAVITS, ETC.

Affidavits referred to in the stipulation of Counsel of Dec. 20, 1902. Wyman Vol. 9 p 4495.

Under the following clause:—

"It appearing from the report of the Board of Inquiry that there were certain affidavits tendered to the Board of Inquiry by Oberlin M. Carter, which are not copied into the Stenographer's report of the testimony of witnesses (not under oath) before the board, and the present counsel of the parties not now knowing what those affidavits are or where they are, it is agreed that if they can be produced and identified that they shall be considered as part of the Board

of Inquiry record on the same footing as the unsworn statements of witnesses before the board as provided in clause (1), with the further statement that the Board of Inquiry report states, that they were typewritten affidavits closely identical in phraseology and from persons who were accessible, and should have appeared before the board for cross-examination."

Endorsement on cover to affidavits Appendixes to Capt Carters final statement Oct 23, 1897 44 Enclosures

(Stamped)
Office Chief of Engineers,
War Department
22530

71
Nov 13, 1897.

State of Georgia
County of Chatham. } ss.

Personally appeared E. Bransfield, who being duly sworn, deposes and swears, that he is a mat builder and being in the employ of The Atlantic Contracting Company he built mats during 1896 & 1897 for said company at Foot Point S C, Rosedew S. C—Gascoigne Bluffs D. C. and has been building mats for said company since 1893 That these mats so built by him were for Savannah Harbor Improvement work and were built as follows:

Grillages. The grillages were made of good poles as straight as could be had, averaging 4 inches in diameter laid from 4 to 6 feet apart between centres, both lengthwise and crosswise, lapping 4 to 5 feet and fastened together by a number of wrappings No. 3 wire.

Fascines. The fascines were all made as follows: The brush was best to be had. Some of it was very heavy like black-jack and some was light like myrtle. Black-jack and water-oak weigh three times as much as some other kinds of brush. It was as straight as could be got and was laid carefully lapping joints into the fascine horses. When enough brush was in it was choked as tightly as could be by a choker with two levers connected by strong rope and chain and worked by two men to a diameter of not less than 9 inches and firmly tied at intervals of two feet. In choking, if it was found that too little brush had been put in to make 9 inches

when properly choked, the fascine was not used. If too much brush had been put in, the fascines went and the Government had the benefit of the increase.

Mats. All mats were built as follows; and laid on top of one another. They were built on gin barges. The first layer of poles of the grillages was laid crosswise of the gin poles and the second layer crosswise to the first and wired together as stated. The fascines were shoved in close on top of this grillage, making a solid, close layer of them. Upon this layer a second grillage was placed, hauled down, and tied thoroughly to the first one with No. 8 wire at all crossings of the grillage poles. On top of this grillage a second mat was built. This was done as follows: On top of the first mat another close layer of fascines was put in crosswise to the first one, and instead of the grillage poles a quarter to a half more fascines were put into all of the middle mats. On top of that layer of fascines another grillage was put which was hauled down and tied with wire both to the grillage below and to the bottom grillage, thus making two mats. This way was continued for the entire number of mats built on top of each other, each mat being wired to the one below it and to the bottom one, making the whole thing solid.

E BRANSFIELD

Sworn to and subscribed before me this 19th day of October, 1897.

W. V. DAVIS

(Seal) *Notary Public, Chatham County, Georgia.*

MEMO.

Cost 8 course mat, 50′ x 75′ Cumberland Sound.

480 binders at 25c	$120
40,000 lin. feet fascines 9″ in diam. at 3½,	1400.
2,000 lbs. wire at 4c	80.
Assembling mat. Labor,	300.
Towing to storage,	30.
Towboat sinking mat, 2 days,	60.
Labor " " 1 1/3 days,	60.
2 Foremen 2 days "	18.
2 " 2 " building mat,	14.
3 " 2 " in woods	18.
Superintendents and assistants,	30.
Insurance, taxes, deterioration and loss on a plant of 40,000 at 50% for 1/150 yr.	133.
	2263.
Interest 1 year at 6%	136.
	$2399.
Contingencies 20% (Loss mats 10%)	480.
Cost of 3333 Sq. yds, at 86c	2879.

GEO. W. BROWN,
C. E.

MEMO.

Estimated cost of a ten course fascine mat for Savannah Harbor Improvement.

Length of mat 105 feet.
Width's 2 courses 25 feet.
" 2 " 30 "
" 2 " 35 "
" 2 " 40 "
" 2 " 45 "

Labor handling fascines and constructing mat on gin barge	312.50
Labor making, hauling, cutting brush, including cost of brush 4083.33 square yards of fascines 9″ in diameter at 50 cents per square yard	2041.66
Labor cutting, hauling, including the cost of binders 550 at 20 cents	210.00

1500 lbs. of wire at five cents	75.00
Tug boats 3 days towing mat at $40.00	120.00
Tug boat two days sinking mat at $40.00	80.00
Labor sinking mat 25 men 2 days at $1.25 per day	62.50
General expenses, including superintendence, foreman, insurance taxes and repairs to an $80,000 plant	100.00
Deterioration and loss of plant also loss of material not accepted in the work and other contingencies	300.00
4083.33 square yards at 80.8 cts.	$3301.60

R. S. BURNETT,
C. E.

State of New York, }
City and County of New York. } ss.

Personally appeared R. S. Burnett, Civil Engineer, who being duly sworn deposes and says: That he has had a long experience in Harbor and River work where mats have been used constructed of brush fascines. Deponent has been in the mat camps of the Atlantic Contracting Company at various times since 1893 and has seen their men constructing fascines in choking racks, making the fascines compact with twisted levers and properly tying the same. In 1891 deponent made brush mats under the direction of Gen. Q. A. Gillmore for cross tides dam in Savannah Harbor. Those mats were constructed of brush fascines, the brush being as straight as could be obtained and choked in the same way as they were choked by the Atlantic Contracting Company but not so compactly choked as theirs. Deponent has constructed brush mats on the Kentucky River under Major Post and Major Lockwood. Those mats were not so well constructed as those he has seen in Savannah Harbor. Deponent is familiar with the specifications for improving Savannah Harbor. He has never heard an inspector, Assistant Engineer or any other employe of the government say that the fascines, mats or any of the contractors' work was done otherwise than in accordance with the specifications. He further states that while engaged on the construction of the mining casemate at Fort Pulaski in 1895 he went with Mr. Cooper, the United States Inspector on the Harbor work to see a large multiple mat sunk on the line of the Cockspur Island training wall,

Remarking that the mat was put together strongly, Mr. Cooper said that the contractor was obliged to build the mats strong and compact in order to get them in the work, the water being rough. Deponent heard said Mr. Cooper say that Florida rock was better for the work there than granite.

R. S. BURNETT,
C. E.

Sworn to and subscribed to before me this 20th day of October, 1897.

CHARLES PLATNER,
Notary Public, N. Y. Co.

(Seal)

Commonwealth of Massachusetts,
Suffolk, ss. Clerk's Office of
Superior Court.

I, Jos. A. Willard of Boston, in said County, duly elected, qualified and sworn as clerk of the Superior Court, for and within said County and Commonwealth, dwelling in Boston in said County, said Court being a Court of record with a seal which is hereto affixed, the records and seal of which Court I have the custody, do herein and hereby, in the performance of my duty as said Clerk, certify and attest that Thomas J. Kenney, before whom the annexed affidavit proof or acknowledgment was taken and subscribed, is a Notary Public for, within, and including the whole of said Commonwealth, and has authority to execute and take affidavits, proofs and acknowledgments in all the Counties in said Commonwealth, duly appointed, commissioned, qualified, sworn and authorized by the laws of said Commonwealth to act as such; and also duly authorized by the laws of said Commonwealth to take affidavits and certify proofs of acknowledgments of deeds of conveyances for lands, tenements, hereditaments, lying and being in said Commonwealth; in any part thereof and to be recorded therein, wherever situated and however bounded, that he was at the time of taking the affidavit, proof or acknowledgment, hereto annexed, such Notary Public that due faith and credit are and ought to be given to his official acts; that I am well acquainted with his signature and handwriting, and I verily believe that the signature to the said affidavit, proof or acknowledgment is genuine, and further, that the annexed instrument is executed and acknowledged according to the laws of said Commonwealth.

Witness my hand and the seal of said Court at Boston, in said County and Commonwealth, this 11th day of October, A. D. 1897.

JOS A. WILLARD,
Clerk.

(Seal)

United States of America,
Commonwealth of Massachusetts,
County of Suffolk.

James B. Connolly, of Boston, in said County, being duly sworn, deposes and says:

I am twenty-eight years of age. I was employed by Capt. Carter as clerk in the United States Engineer office, Savannah, Ga., from September, 1890, to the Summer (about July 1st) of 1893, and during that time was used almost entirely as an assistant to J. W. O. Sterly, chief clerk, in general office work, and was witness to the strictness of Capt. Carter where the workings of the office were concerned, and became fully imbued with the earnestness of his oft-repeated instructions to Mr. Sterly that in official accounts and other matters there should be no deviation from strict regulations; and that payrolls should exactly represent actual work done and bear only the names of men actually employed,—in fact, be morally as well as legally correct. Mr. Sterly assured Capt. Carter that no irregularities were allowed by him in any way. Mr. Sterly further impressed on deponent the seriousness of these instructions of Capt. Carter's.

JAMES B. CONNOLLY.

On the eleventh day of October, A. D. 1897, personally appeared the above named James B. Connolly, to me well known and known to me to be the individual described in and who executed the foregoing affidavit and thereupon made oath to the truth of the same.

Before me

THOMAS J. KENNY,
Notary Public within and for the County of Suffolk and Commonwealth of Massachusetts aforesaid.

(Seal)

State of Georgia, }
County of Chatham. } ss.

Personally appeared C. C. Cole, who, being duly sworn, deposes and swears, That for the last six years he has been in the employ of The Atlantic Contracting Company and has been employed during all that time at the various mattress camps of said company where the mattresses for the Government works were being built, and that he is thoroughly familiar with the construction of said mattresses and the manner in which they were built having frequently himself superintended the building of the same. Deponent further says that all the mattresses built at said camps were built as follows:

Grillages. The grillages were made of good poles as straight as could be had, averaging 4 inches in diameter laid from 4 to 6 feet apart between centres, both lengthwise and crosswise, lapping 4 to 5 feet and fastened together by a number of wrappings of No. 8 wire.

Fascines. The fascines were all made as follows: The brush was the best to be had. Some of it was very heavy, like black-jack, and some was light, like myrtle. Black-jack and water-oak weigh three times as much as some other kinds of brush. It was as straight as could be got and was laid carefully lapping joints into the fascine horses. When enough brush was in it was choked as tightly as could be by a choker with two levers connected by strong rope and chain and worked by two men to a diameter of not less than 9 inches and firmly tied at intervals of two feet. In choking, if it was found that too little brush had been put in to make 9 inches when properly choked, the fascine was not used. If too much brush had been put in, the fascines went and the Government had the benefit of the increase. I was often employed in the woods near the camps as foreman for the Atlantic Contracting Company and it was part of my duties to see that fascines were properly made as above described and to reject or throw aside to be made over again all that did not come up to the proper standard.

Mats. All mats were built as follows: and laid on top of one another. They were built on gin barges. The first layer of poles of the grillages was laid cross-wise of the gin poles and the second layer crosswise to the first and wired together as stated. The fascines were shoved in close on top of this

grillage, making a solid, close layer of them. Upon this layer a second grillage was placed, hauled down, and tied thoroughly to the first one wtih No. 8 wire at all crossings of the grillage poles. On top of this grillage a second mat was built. This was done as follows: On top of the first mat another close layer of fascines was put in crosswise to the first one, and instead of the grillage poles a quarter to a half more fascines were put into all of the middle mats. On top of that layer of fascines another grillage was put which was hauled down and tied with wire both to the grillage below and to the bottom grillage, thus making two mats. This way was continued for the entire number of mats built on top of each other, each mat being wired to the one below it and to the bottom one, making the whole thing solid.

C. C. COLE.

Sworn to and subscribed before me this 19th day of October, 1897.

W. V. DAVIS.

(Seal) *Notary Public, Chatham County, Georgia.*

State of Georgia, }
Chatham County. }

I, Edw. G. Trenholm, Superintendent of the Savannah Board of Trade, do hereby certify the following to be true and correct extracts from the Annual Reports made to said Body by its President in the years mentioned, to-wit:

(1) Extract from the Second Annual Report submitted for the year 1884-85 by President James K. Clarke.

"Concerning the report of the Marine Committee I regret being unable to congratulate you on any very visible improvement to our river or harbor during the past ten years. As from the best information I can obtain our pilots do not claim to have more than 19 feet channel, when in 1872 vessels drawing 18 feet came up to our wharves. * * * I do not pretend to criticise the work as that comes within the province of an engineer, but the improved depth of the channel I regret to say is very discouraging."

(2) Extract from the Fourth Annual Report submitted for the year 1886-87 by President Fred M. Hull.

"We are fortunate in having assigned to our harbor improvements Lieut. O. M. Carter, an officer not alone thoroughly competent, but one who has taken a lively interest in

our city and thoroughly identified himself with our people. Under his direction we have been steadily increasing the depth of water until we have now according to his report 22 feet to the sea at spring tides; and ordinary tides 22 feet from the city to the sea except at Long Island crossing where there is 21."

(3) Extract from the Fifth Annual Deport, submitted for the year 1887-88 by President Fred M. Hull.

"The Improvements to our harbor are at a stand still owing to the failure of the River and Harbor bill, and it is of vital importance that the present Congress shall make a liberal appropriation to commence the plan of the engineers—to give us 28 feet to the sea. We have endeavored to keep this matter before the public and to give to our immediate representative in Congress such assistance as he may need, and in this we have been greatly assisted by Lieut. O. M Carter of the Engineer Corps in charge of the work."

(4) Extract from the Sixth Annual Report, submitted for the year 1888-89 by President John R. Young.

"During the past year work has been resumed on our river improvement. This work has been carried on under a project commenced in 1873 to obtain a depth of 22 feet in the river at mean high tide, and is now practically completed."

(5) Extract from the Eleventh Annual Report, submitted for the year 1893-94 by President D. G. Purse.

"The work of harbor improvement moves steadily forward under the able direction of Capt. O. M. Carter, U. S. Engineer Corps in charge. * * * The depth in the river gives evidence of a steady increase under the combined action of the dredges and the scouring brought about by the jetty system. Very recently a vessel drawing 22 feet 1½ inches is reported to have been towed in from the sea to the city on a single tide."

(6) Extract from the Twelfth Annual Report, submitted for the year 1894-95 by President D. G. Purse.

"The work on our river and harbor continues under the able direction of Capt. O. M. Carter, Corps of Engineers, and more manifest is made each year the effect upon our commerce of the great improvement that has been accomplished by the liberal expenditure made by the government."

(7) Extract from the Thirteenth Annual Report, submitted for the year 1895-6 by President D. G. Purse.

"Your co-operation with the Cotton Exchange in appealing to Congress for an additional appropriation of $1,000,000

to construct a training wall at Tybee to provide a safe anchorage and to enable Capt. O. M. Carter, Corps of Engineers U. S. A., to complete and make permanent the splendid improvement of our river and harbor he has so ably directed, is likely to be successful.

(8) Extract from the Fourteenth Annual Report, submitted for the year 1896-97 by President D. G. Purse.

"All arrangements are now completed for pressing the new survey already begun, and before the opening of the coming season there is every reason to believe a new chart will, be issued from Washington giving full credit for the change accomplished by the use of the $3,500,000 appropriated by the Government and the splendid results achieved by Capt. O. M. Carter, Corps Engineer U. S. A., in its expenditure for improvement of our river and harbor.

And in witness of the correctness of the foregoing eight extracts from the Annual Reports I have hereto set my hand and the official seal of the Savannah Board of Trade at Savannah this October 7th, 1897.

EDW. G. TRENHOLM,

(Seal) *Supt. & Secy. Savannah Board of Trade.*

State of Georgia, }
Chatham County. }

I, J. P. Merrihew, Superintendent of the Savannah Cotton Exchange, do hereby certify the following to be true and correct extracts from the Annual Reports made to said body by its Presidents in the years mentioned, to-wit:

(1) Extract from the Twentieth Annual Report submitted on November 10th, 1892, by Mr. J. F. Minis, the retiring President of said Exchange, to-wit:

"The National Government has passed an Act to give us twenty-six feet of water from the city to the sea, and for this year's work has appropriated $318,750.00.

"We consider that the Engineer Department is in most able hands, and the money available for the project in view will be used to the best advantage. We now have a greater draft of water than ever known, as we can take 22 feet on spring tides and 21 on neap tides from the city over the bar."

(2) Extract from the Twenty-first Annual Report submit-

ted on November 9th, 1893, by Mr. Edward Karow, the retiring President of said Exchange, to-wit:

"The work of improvement in our harbor has been steadily carried on under the efficient supervision of Captain O. M. Carter, the able engineer in charge, and ships drawing 22 feet of water can now pass in safety from the city to the sea at mean high tide."

(3) Extract from Twenty-second Annual report submitted on November 8th, 1894, by Mr. W. G. Cann, the retiring President of said Exchange, to-wit:

"We can again congratulate you upon the continued success with which the appropriation for the deepening of the channel of the river has been expended. We are assured that at the present time there is a depth of 24 feet from the city to the sea at mean high water, and there is every reason to believe that the depth hoped for of 26 feet will be an accomplished fact under the existing contract. The ability with which this work has been prosecuted, and the energy shown at all times by Captain O. M. Carter, United States Engineer in charge, in furthering the interests of the City of Savannah in conection with his work, entitles him to the warm praise and gratitude of the people of Savannah."

(4) Extract from the Twenty-third Annual Report submitted on November 7th, 1895, by Mr. Bierne Gordon, the retiring President of said Exchange, to-wit:

"In this connection we may call attention to the deepening of the channel of the Savannah River, which has resulted in securing a depth of 19 feet at mean low water, or 26 feet at mean high water. To Captain O. M. Carter, United States Engineer, is due the credit for this result of his professional skill, and the gratitude of this community for his zeal and energy in furthering the interests of the City of Savannah."

(5) Extract from the Twenty-fourth Annual Report submitted on November 5th, 1896, by Mr. W. W. Williamson, the retiring President of said Exchange, to-wit:

"Vessels drawing over 23 feet have loaded here during the past two months and gone to sea without any impediment. This but proves the thoroughness and efficiency with which the work of deepening the channel has been done under the supervision and direction of Captain O. M. Carter, the Government Engineer."

And in witness of the correction of the foregoing five extracts from the Annual Reports I have hereto set my hand and

the official seal of the Savannah Cotton Exchange, this 8th day of October, 1897.

J. P. MERRIHEW,
Supt.

(Seal)

Commonwealth of Massachusetts, }
Suffolk County. }

Personally appeared Thomas G Connolly who being duly sworn deposes and says:

That from November, 1894, until March, 1896, he was employed by Capt. O. M. Carter, in charge of the United States Engineer Office at Savannah, Ga., as clerk in said office;

That, while acting in his capacity as clerk, he distinctly heard Captain Carter at various times direct Mr. J. W. O. Sterly, his Chief Clerk, to use extreme care in making out the vouchers and to see that the only names entered on the pay-rolls were those of men who had actually worked the number of days and in the capacities stated therein; and

That he heard Mr. Sterly invariably answer that all due precautions were taken and that the army regulations were adhered to in every particular.

I hereby swear that the above statements are true.

THOMAS G. CONNOLLY.

Sworn to and subscribed before me this 7th day of October 1897.

ROBERT F. GRIFFIN
Notary Public.

(Seal)

State of Georgia, }
Chatham County. }

Before me in person appeared Thomas J. Daniels, who being duly sworn deposes and says: 'That he is at present inspector on the Government works in Savannah Harbor; that he has been employed as such for some years and that he is familiar with the coast country of Georgia, and with the methods of making brush fascines and mattresses, and with the specifications under which such have been made at Savannah and Fernandina since 1892. Deponent knows the cost of constructing and sinking mattresses and states that to the best of his knowledge and belief mattresses built in several courses on top of one another, as at Savannah and

Fernandina cannot be put into the work for less than 75 to 85 cents per square yard. Deponent states further that the fascines and mattresses built under Captain Carter's orders in Savannah were built according to the specifications, deponent's statement of August 18th, 1897, to the effect that they were not so built being brought about by being informed that only mattresses constructed according to instructions given since Captain Carter's departure were in accordance with the specifications.

THOMAS J. DANIELS

Sworn to and subscribed before me this 5th day of October, 1897.

W. V. DAVIS
(Seal) *Notary Public, Chatham County, Georgia.*

Charleston, S. C., Oct. 8th, 1897.

Capt. O. M. Carter,
United States Army.
Dear Sir:

I have had a great deal of experience in building jetty work on the Atlantic Coast, building mats and sinking them and stone. In my judgment it is cheaper and easier for a contractor to build any number of single mats than to build the same number of mats on top of one another. In sinking them in rough water, if everything goes well, it may be cheaper to sink them in courses than to sink them singly; but the risk of loss is much greater. So taking it all in all I see no special advantage in one method over the other. I consider the actual cost of mats made of brush fascines to the contractor to be about 80 or 90c a square yard in the work. I have had specifications from you for your works and I have been present myself or by my representatives at three lettings. I got all information I wanted perfectly satisfactory and everything at the lettings was perfectly fair. The risk in mat work is greater than in stone work and the profit to a contractor at the prices at Fernandina is less than on stone. Considering the circumstances at the time of the letting the Fernandina prices are very reasonable and no lower bids could have been had.

Very truly yours,

JACOB FRIDAY

State of Georgia, }
Chatham County. }

Personally appeared E. L. Friday, who being duly sworn deposes and says, that he is a member of the firm of Jacob Friday & Sons, who are contractors, and who have done a lot of government work on the Atlantic coast, and deponent knows the difficulties and cost attending the same. Deponent went over the ground at Fernandina carefully in 1896 and got the specifications and looked them over and bid on the work. Deponent knew that Florida rock had been used and naturally expected it to be used again. Deponent is familiar with mattress construction, and was perfectly satisfied to build either grade of mats at the same price, their cost not varying materially. It was just before the time of the election and the people were afraid of free silver so that deponent's firm then did not dare to bid too low. In view of all the circumstances the bids were very reasonable and in deponent's judgment no lower prices could have been obtained then. Great deal of work was to be done in the breakers and the exposure was bad. In sinking mattresses deponent naturally expected, where practicable for any design, to sink as many on top of one another at once as were required, that being in deponent's judgment, the proper way of sinking them.

E. L. Friday.

Sworn to and subscribed before me this 7th. day of October, 1897.

W. V. Davis

(Seal) *Notary Public, Chatham County, Georgia.*

State of Georgia, }
Chatham County. }

Before me personally appeared Hamilton E. Garmany, who being duly sworn deposes and says, that he is a resident of Chatham County, Georgia; that he has been employed as recorder of dumping of dredged material in Savannah Harbor; that as such he has dumped such material in the Venus Point Dumping Ground; that no such deposits were ever made in the vicinity of the steamboat channel, and that the orders given to him by the United States Engineer's Office

expressly prohibited any material being dumped where it might interfere with the navigation of said channel.

HAMILTON E. GARMANY

Sworn to and subscribed before me this 6th. day of October, 1897.

W. V. DAVIS

(Seal) *Notary Public, Chatham County, Georgia.*

New York, Oct. 19th, 1897.

Capt. O. M. Carter:—

At your request I desire to state; I am the President of the Atlantic Contracting Co. I have never at any time directly or indirectly given or paid you any money or any valuable thing.

JOHN F GAYNOR

Defts Ex. 91—1/17/05 R. H. W.

State of Georgia)
Chatham County)

Personally appeared J. H. Gaynor, who being duly sworn deposes and says: That he has had charge of fascine and mat construction at various places along the Atlantic Coast for about fourteen years; deponent was in charge of sinking mats in Savannah Harbor, Georgia, during the past four or five years and also in 1897. Deponent further says the fascines were as well built during the past five years as in the beginning years ago and were all built according to the contract. The mats in courses contained more fascines than when made singly, and said mats were properly made and according to the contract. Deponent has frequently been told by Mr. A. S. Cooper, Assistant United States Engineer that the mats were satisfactory and that they were built properly and in accordance with the requirements of the contract.

J. H. GAYNOR

Sworn to and subscribed before me this 19th day of October, 1897.

W. V. DAVIS

(Seal) *Notary Public, Chatham County, Georgia.*

STATEMENT OF W. T. GAYNOR.

I am now and for many years past, off and on, have been in the employ of the Atlantic Contracting Company. I had charge of the work at Savannah under contract of 1892 in its early stages when I was taken sick about January, 1893, and I then left the work. I returned to Savannah about February, 1894, and together with my Brother, Edward, supervised for the Atlantic Contracting Company the work at Savannah, until about November, 1894, when I went to Fernandina, and took charge of the work there under contract of Anson M. Bangs, and I carried this work to completion. I also took charge of the work for the Atlantic Contracting Company at Fernandina, under the contract of 1896. I am thoroughly familiar with all the details of the work done under my supervision, and I have a fairly thorough knowledge of the work at Savannah and Fernandina since 1888.

I have had an extensive experience in the building of fascines and mats, and I have an accurate personal knowledg of the fascines and mats which were constructed at Savannah and Fernandina during my connection with said works.

There has been no change whatsoever in the construction or the character of the fascines and no material change in the construction of the mats used in the works from the time I first became conversant with them up to the present time, except that with a few exceptions, prior to 1893, the mats were built and sunk in single courses, while since then, for the most part, they have been built and sunk in several courses. In building mats in several courses the bottom grillages of the intermediate courses were sometimes left off, and in lieu thereof about 25% extra fascines were put in. This was done at the instance of the Engineer Officer, and made no material difference to us in cost. The fascines built by me were thoroughly made out of the best brush obtainable, were well trimmed and choked and were well up to the specifications. So also were the mats. The work was all well done and accepted by the inspectors and assistant engineer in charge as satisfactory. The fascines built at Savannah under contract of 1892 were exactly the same as those built under Savannah contract of 1896 and Fernandina contract of October, 1894 and 1896, and the latter were just as good as the former.

The average diameter of the fascines after thoroughly choking was twelve inches, none less than nine inches.

To be sure of always having nine inches we had to put in usually more than enough brush, but when it was once in we left it there.

It is well established by experience that fascines built of green brush no matter how well they be choked if exposed to the weather for several days will shrink and the choker strings become loose. I saw the fascines at Fernandina which had been rechoked by Capt. Gillette's order. These fascines were taken from a large pile and had laid there at least three weeks, during which time they had been exposed to the weather, some of which would have been rejected by us when we went to build the mat.

I was informed that they were rechoked under extra heavy pressure, often breaking 3/8 inch chains, to between seven and eight inches. I have examined these fascines since and it is safe to say that they can be rechoked again to a considerable smaller diameter. If in the course of constructing mats fascines were found imperfectly choked or not up to the proper average, they were not put in the mats by us. There was every reason why I should require that the fascines should be properly made, as we paid for them to be twelve inches after choking, and furthermore we knew that if improperly made it would seriously affect the strength of the mattresses and we would run great risk in launching and sinking them. Relatively much greater strength is required of mattresses in several courses than in one of a single course. The strain on the former in getting off the barges and in sinking is very heavy. At Capt. Gillette's request I built several mattresses according to his ideas, but not according to the specifications. The fascines were made from the brush fascines we had on hand for several weeks. The fascines were fifty feet long; all branches and leaves were taken off and the fascines were choked to a diamteer of from ten to twelve inches. I had never seen before a fascine of that kind used in harbor work. Assuming that the brush and poles suitable for this purpose could be had in the locality I had just as soon build Capt. Gillette's fascines as the other. There is no material difference in the cost of construction. Capt. Gillette undertook to make a comparison between a four course mat constructed with the utmost care out of fascines made according to his instructions and a six course mat built in the usual way. My mat was

first made and lay in the neighborhood of ten days exposed to the weather awaiting the arrival of his. After his arrived they both remained exposed for about three days until Capt. Gillette came to make inspection. When he came I called attention to the fact that although the fascines in his mats were made from brush partly dried, which had been thoroughly rechoked, yet by the effect of the weather the brush had still further shrunk and the sewing wires become loose to the extent of about three inches.

After the difficulty experienced at Savannah in launching the large mats with the process of which I had become familiar I began to think about the matter and ultimately I invented a design which I had patented, and this design is now used in launching mats both at Savannah and Fernandina.

My attention has been called to the Empire Construction Company, the stock book of which, I am informed, was found among Capt. Carter's papers. This was a close corporation and all the stock owned by three people, namely: Jno. F. Gaynor, Capt. B. D. Greene and A. M. Newton. A few shares stood in the name of others for the purpose of organization. I was the treasurer of the company and had possession of all the books. While I have no definite recollection on the subject I must have left the stock book at Capt. Carter's office inadvertently. At any rate, Capt. Carter had no interest whatsoever in the company, directly or indirectly.

W. T. GAYNOR

State of New York }
City and County of New York } ss

Personally appeared before me W. T. Gaynor, who being duly sworn deposes and says that the foregoing statement is true.

Sworn to and subscribed to before me on this 20th day of October, 1897.

ROBT. LAWRENCE
Notary Public, Kings Co.

Cert. filed in N. Y. Co.

STATEMENT OF EDWARD H. GAYNOR.

I am now and for many years past have been off and on in the employ of the Atlantic Contracting Company. I have also myself taken Government contract work. I had the contract of 1892 for the work at Fernandina, and the work was carried to completion under my personal supervision, and from June, 1893, I superintended for the Atlantic Contracting Company the work done at Savannah under their contract of 1892, and I also had charge of the work of construction for said Company under the contract of 1896. I am thoroughly familiar with these works in every department thereof and I have also a thorough personal acquaintance with all harbor works constructed at Savannah since 1881 and at Fernandina since 1886. I have actual personal knowledge of the character of the fascines and mats which were actually used in the Government works at Savannah since 1881, and at Cumberland Sound since 1885. From 1881 up to the present time, there has been no difference in the construction or character of fascines and mats (commonly known as brush mattresses) except that with a few exceptions prior to 1893 the mats were built and sunk in single courses, since which date they have for the most part been built in several courses. The reason of this change in construction is this: In 1893 we were building and sinking single course mats on Lower Flats training wall at Savannah. The mats were weighted with stone and sunk. In the progress of the work it was found that owing to the soft bottom of the river the mats embedded themselves deeply in the mud, and the desired results were not being obtained. Captain Carter was very much exercised over the situation, for the reason that it had been self-evident that unless this sinking in the mud could be stopped the estimate for the work would be exhausted long before the work was completed, and requested me to experiment with building the mattresses in several courses and sinking in bulk, thus getting rid of the heavy weight of stone. This at first I did not care to do, because we were satisfied with the old method; but after talking the matter over with Captain Carter and Mr. Cooper, I agreed to make the experiment, it being always my policy, as far as possible, to meet the views of the Engineer in charge.

I first built tanks in the side of the barges connected them with six inch valves, through the sides of the barges, and

connected the valves by rods running athwartship through the barges. These rods had handles by means of which the valves were opened and closed. Upon the barges the mats were built in courses on ways or gins. The barges were then towed to the sinking ground; the valves opened and the tanks filled with water by means of which the barge was careened. It was hoped that by this process the mats could be launched from the barges with the assistance of a pull from the tugs; but in this we were disappointed and it took us about four or five days in getting off the first mat. The chief difficulty in this method was that after the tanks were filled to get the incline and the mat failed to come off the barge, was nearly submerged one side and could be handled with difficulty, and as the water could not be let out, there was serious risk of losing the barge. I was somewhat disgusted and had not it been for my desire to exhaust every means to accomplish what the Engineer officer desired, I would have abandoned further experiment. It was then suggested that a bulkhead about 3 1/2 feet high be built the whole length of one side of the barge, and the gins laid from the top of bulkhead to opposite side of barge, thus forming a permanent incline and the mats built on this incline, and then by means of pulls and blows from the tug the mats were disengaged from the barge. This plan was more successful than the first, but was still attended with difficulties and was by no means satisfactory to me, as we often lost days in our efforts to get the mats launched.

But as the work from the beginning of the use of this process began to show up well, and there was no material difference that I could see in cost, and in view of the wish of the Engineer officer, I was willing to continue the experiment as long as I could do so without any special loss to my employers, but under no circumstances would I have bound myself to continue the use of this method, for the reason that the whole thing was experimental. I had no way of knowing what the ultimate result might be.

Mr. Cooper who seemed to take a great interest in these experiments and who I understand now takes some credit to himself for their success, stated to me that it was a lucky thing that we changed to these large mats, for if we had not done so the Government would not have had near enough money to complete the work.

With respect to the construction of the mats: the fascines were made and choked according to the specifications, but

we made them on top of one another, and when the Engineer made us leave out a grillage he made us put in about 25% extra fascines for it. The work was carefully and well done and was acceptable to the inspectors and assistant engineers and they used to tell us so. The fascines built in Savananh under the contract of 1892, were exactly the same as those built under the Savannah contracts of 1896, and the Cumberland Sound contracts of 1892, 1894 and 1896, and those built under that contract were equally as good as those built under previous contracts. They were well made, trimmed of rough limbs and choked and averaged about 12 inches in diameter and there were none less than 9 inches. Everybody knows that in the construction of fascines, if a fascine built of green brush and thoroughly choked is left exposed to the weather for several weeks, the brush will shrink from 25% to 50%, and consequently the choke rope will slack. With respect to two fascines at Savannah which were rechoked by Captain Gillette, they were taken from a very large pile of bundles nearly all of which had been lying exposed to the weather about six weeks and of course the two bundles were not a fair test of the whole pile. I was not present when the rechoking was done, but saw the fascines the next day and was informed that they showed 7 and 8 inches in diameter, respectively, which showing I considered excellent considering the time of exposure and the time of year.

In constructing the mats, if a fascine was found to be loose or under 9 inches, it was not allowed to go in. There was no object for the contractor to have had the fascines less than 9 inches, as they were paid for at 12 inches so as to assure 9 inches always. Unless the fascines were properly choked and built when put in the mattresses the later would have been in unsatisfactory shape for launching and sinking, especially on an ocean bar, and hence Mr. Cooper has said to me repeatedly that a mat that was good enough for the contractors was good enough for the Government,—because the contractors could not afford to build them below the contract, or they might lose them.

The reason why the fascines were left so long exposed was because the work had practically been stopped because of the position taken by Captain Gillette in regard to the work. It may also be said that sometime after fascines have been built, the weather becomes bad and the work has to stop.

I saw the fascines and mats which were built under the

instructions of Captain Gillette. The difference between these and the old mats was simply in the trimming of the brush.

All twigs and leaves were removed and no crooked brush was used. There was no more material in his fascine than in mine, and the fascines were no more tightly choked. The poles though were rigidly straight. There would be no material difference in the cost of building the Gillette fascines and mats and the old style,—assuming that it was possible to obtain in the locality absolutely straight brush and poles. This, however, is an impossibility. I never saw a fascine made like Captain Gillette used in this jetty work on the Atlantic coast, and I have used them on the Delaware River, at Georgetown, for the officers there, and at St. Helena for Col. Harris, and have seen them at Mayport.

My attention has been directed to transactions for the purchase of stone from the City of Savannah. As to this, I will say that we have frequently bought stone from the City. In the transaction referred to we paid $500 for certain stone at Savannah Quarantine Station part of which was beyond the harbor line. Six weeks afterwards I purchased for about $200 twice as much stone lying inside the harbor line and which the City did not need removed, which was also much easier to get at. I have purchased stone since this from the Citv at relatively the same figures. As to stone from Mr. Brown: We culled out what was below the specifications and did not load it or send it down the river to have it rejected there. We threw it off the cars or left it on them. We also got permission to dump it alongside the Government works, but I don't remember having used this permission. The most of it, as I remember, was put on the wharf or near it.

State of New York }
City and County of New York } ss

Personally appeared before me Edward H. Gaynor, who being duly sworn deposes and says that the foregoing statement is true.

EDWARD H. GAYNOR

Sworn to and subscribed to before me on this 20th day of October, 1897.

ROBT. LAWRENCE
Notary Public, Kings Co.

Cert. filed in N. Y. Co.

State of Georgia. }
Chatham County. }

Before me personally appeared H. M. Garmany, who being duly sworn deposes and says: That he is a resident of Chatham County, Georgia; that he has been employed as recorder of dumping of dredged material in Savannah Harbor; that as such he has dumped such material in the Venus Point Dumping Ground; that no such deposits were ever made in the vicinity of the steamboat channel, and that the orders given to him by the United States Engineers' Office expressly prohibited any material being dumped where it might interfere with the navigation of said channel.

H. M. Garmany

Sworn to and subscribed before me this 7 day of October, 1897.

W. V. Davis

(Seal) *Notary Public, Chatham Co. Ga.*

State of New York, }
County of Onondaga. } ss.

Personally appeared before me Thomas F. Gaynor, who, being duly sworn, deposes and says, that he has had a large experience building fascines and mats; he has seen them build at various places on the Atlantic Coast and the ones which he has seen built at Fernandina are as good as any he has ever seen built anywhere else. For some years past he has been in the employ of the Atlantic Contracting Company and has built Brush Fascines and mats for said Company. In 1897 he had charge of building them at Fernandina. All of the mats built by him were made as follows:

Grillages: The Grillages were made of good poles as straight as could be had, averaging four inches in diameter, laid from 4 to 6 foot apart between centres, both lengthwise and crosswise, lapping 4 to 5 feet and fastened together by a number of wrappings of No. 8 Wire.

Fascines: The fascines were all made as follows: The brush was the best to be had. Some of it was very heavy like Black-jack and some of it light like myrtle. Black-jack and Water Oak weigh about three times as much as some other kinds of brush. It was as straight as could be got and was laid carefuly lapping joints into the fascine horses. When

enough brush was in it was choked as tightly as could be by a choker with two levers connected by a strong rope and chain, and choked by two men to a diameter of not less than 9 inches and firmly tied at intervals of two feet. In choking, if it was found that too little brush had been put in to make 9 inches when properly choked, the fascine was not used. If too much brush had been put in, the fascines went and the Government had the benefit of the increase.

Mats: All mats were built as follows: and laid on top of one another. They were built on gin barges. The first layer of poles of the grillages was laid crosswise of the gin poles and the second layer crosswise to the first and wired together as stated. The fascines were shoved in close on top of this grillage, making a solid, close layer of them. Upon this layer a second grillage was placed, hauled down, and tied thoroughly to the first one with No. 8 wire at all crossings of the grillage poles. On top of this grillage a second mat was built. This was done as follows: On top of the first mat another close layer of fascines was put in crosswise to the first one, and instead of the grillage poles a quarter to a half more fascines were put into all of the middle mats. On top of that layer of fascines another grillage was put which was hauled down and tied with wire both to the grillage below and to the bottom grillage, thus making two mats. This way was continued for the entire number of mats built on top of each other, each mat being wired to the one below it and to the bottom one, making the whole thing solid.

THOMAS F. GAYNOR,

Sworn to and subscribed before me this 21st day of October, 1897.

PATRICK H. KEOHANE,
Notary Public, Onondaga County, New York.

State of Georgia.

Personally appeared George L. Gammont, who being duly sworn deposes and says that, for many years he has been employed on various government work in the Savannah District; that during the latter part of the year 1896 and the first half of the year 1897 he was Master of the United States Steam Launch "Angler" on which Captain Carter made inspections of the government work in Savannah Harbor, Georgia, Fernandina Harbor, Fla., and elsewhere; that it was Captain Carter's habit to call his assistants on board the "Angler" and question them concerning the work, etc.;

that he, the deponent, heard many of these conversations and understood them; that it was Captain Carter's habit to ask whether the work was being properly done according to the specifications, whether the contractors were being held up to their work properly, etc.; that the deponent heard Captain Carter ask Mr. A. S. Cooper many times within the last year concerning the work in Savannah Harbor; that Mr. Cooper replied that the contractors were doing the work properly according to the specifications; that the mats really were better than required by the specifications, because in the Tybee Roads any mat good enough for the contractor was good enough for the United States. At Fernandina deponent heard Captain Carter within the last year question Mr. Marion Twiggs and Mr. John M. Hall many times and heard both of them say the mats were being built properly according to the specifications. The deponent further heard Captain Carter order Mr. Twiggs to examine the work often and heard him ask Mr. Twiggs how the work was standing, and heard Mr. Twiggs say the mats were standing up all right without any change and that the sand had filled up to their tops, that the work was in good shape, etc. Deponent has been on the work often and has always heard from all the assistants that everything was done well and was a success, and has never heard any intimation that any inspector or assistant thought otherwise.

GEO. E. L. GAMMONT,

Sworn to and subscribed before me this 6th day of October, 1897.

State of Georgia, }
Chatham County. }

Personally appeared R. S. Burnett, who being duly sworn deposes and says: That George E. L. Gammont, whose signature appears to the foregoing affidavit signed the same in the presence of deponent, and deponent further says said signature is genuine, and that at the time said affidavit was signed that it was impracticable to secure the services of a Notary.

R. S. BURNETT.

Sworn to and subscribed before me this 7th day of October, 1897.

W. V. DAVIS,

(Seal) *Notary Public, Chatham Co., Ga.*

State of North Carolina, }
County of Brunswick. }

Personally appeared John L. Grim, who being duly sworn deposes and says, that he is a practical and experienced contractor; that in 1896 he bid on the Savannah and Fernandina work; that deponent has had very extensive experience in work of that kind and knows what things cost; that mats built like they have been built at Savannah and Fernandina of brush fascines and in layers of mats on top of one another will cost a contractor between 80 and 95 cents per yard in the work, depending upon the locality and other causes, and that the stone to be used there under the specifications upon which deponent's bid was made will cost from about $3.00 to $4.50 per yard, depending, as above, upon locality and other causes. Captain Carter gave deponent the specifications for both works in 1896 and explained them to deponent very fully. Deponent was told that only the third kind of mat would be used, except for a very few of the others, not enough to affect cost, and that it would be built and sunk as before, if the contractors could do it, several mats on top of one another at once. The lowest grade rock was understood to be Florida rock. Deponent bid on both works in 1896 and the prices in his bids are low, considering the times and the circumstances. No lower prices could be had at that time, so far as deponent knows. Deponent knows the sort of fascines and mats used in the Savannah and Fernandina work, and in deponent's judgment they are as good as used anywhere else, and better than most. All the bidders fully understood the specifications, so much so that deponent would not have lowered his prices any if all the explanations given orally by Captain Carter had been written out in the specifications. Deponent further says that in his opinion, in case of a change in the relative quantities of rock and mats to be used, it would be to the interest of the contractors to have the rock work increased and the mat work diminished.

JOHN L. GRIM,

Sworn to and subscribed before me at Southport, County of Brunswick, N. C., this 6th day of October, 1897.

WM. WEEKS,
Notary Public.

(Seal)

Personally appeared I. H. Hathaway, who being duly sworn deposes and says, that he is a contractor and has had a long

experience building jetties on the Atlantic Coast. He has built brush fascines and mats, and knows what they cost. Deponent is familiar with the kind of mats built at Mayport and Fernandina, and had the contract at Mayport from 1892 to 1895. The fascines and mats built at Fernandina are just like those made in Mayport. They were made on top of each other, which, in the long run, does not change the cost to the contractor, except to increase it a little. The same kind of jetty work at Fernandina will cost more than at Mayport by about 30%. Deponent knows the present prices at Fernandina, and knows the kind of work done. The prices are reasonable.

I. H. HATHAWAY.

Subscribed and sworn to before me at Washington, D. C., the 16th day of October, A. D. 1897.

WILLARD H. MEYERS,
Notary Public.

(Seal)

The Florida Mirror. Book and Job Printing.

The Mirror Publishing Company.

Business Department.

Fernandina, Fla., Oct. 18th, 1897.

State of Florida, }
County of Nassau. }

Before me personally appeared Thomas A. Hall, who being duly sworn deposes and says that he has been a resident of Fernandina, Fla., for the past seven years, and that he has published and edited the "Florida Mirror," a semi-weekly newspaper, published in said City for the past three years, and that he has had frequent occasion to investigate and enquire into the progress and efficiency of the jetty work on Cumberland Sound, and that he has had frequent conversations with various officers in charge of the work on said bar, from time to time, and also with Marion Twiggs and Engineer Hall, Cap't. Carters Assistants who both stated that the work was progressing well; in fact each and every one connected with the jetty work whom I have conversed gave out the impression that Cap't. Carter was faithfully representing

the government in relation to the contract for our bar improvement.

THOMAS A. HALL,
Editor "Florida Mirror."

Sworn to and subscribed to before me this 18th day of Oct., A. D. 1897.

GEO. E. WOLFF,
(Seal) *Clerk Circuit Court, Nassau County, Fla.*

Commonwealth of Massachusetts,
Suffolk, ss. Clerk's Office of
Superior Court.

I, Jos. A. Willard, of Boston, in said County, duly elected, qualified and sworn as clerk of the Superior Court, for and within said County and Commonwealth, dwelling in Boston in said County, said Court being a Court of record with a seal which is hereto affixed, the records and seal of which Court I have the custody, do herein and hereby, in the performance of my duty as said Clerk, certify and attest that Thomas J. Kenny, before whom the annexed affidavit proof or acknowledgment was taken and subscribed, is a Notary Public for, within, and including the whole of said Commonwealth, and has authority to execute and take affidavits, proofs and acknowledgments in all the Counties in said Commonwealth, duly appointed, commissioned, qualified, sworn and authorized by the laws of said Commonwealth to act as such; and also duly authorized by the laws of said Commonwealth to take affidavits and certify proofs of acknowledgments of deeds of conveyances for lands, tenements, hereditaments, lying and being in said Commonwealth; in any part thereof and to be recorded therein, wherever situated and however bounded, that he was at the time of taking the affidavit, proof or acknowledgment, hereto annexed, such Notary Public that due faith and credit are and ought to be given to his official acts; that I am well acquainted with his signature and handwriting; and I verily believe that the signature to the said affidavit, proof or acknowledgment is genuine, and further, that the annexed instrument is executed and acknowledged according to the laws of said Commonwealth.

Witness my hand and the seal of said Court at Boston, in said County and Commonwealth, this 11th day of October, A. D. 1897.

JOS. A. WILLARD,
(Seal) *Clerk.*

United States of America,
Commonwealth of Massachusetts,
County of Suffolk.

Parker F. Harrington of Everett, in the County of Middlesex and Commonwealth of Massachusetts, being duly sworn, deposes and says:

I am thirty-four years of age. In 1888, 1889 and again in 1892 I was employed by Capt. Carter as clerk in the United States Engineer Office, Savannah, Ga., that while acting as clerk I frequently heard Capt. Carter order Mr. Sterly, who was then chief clerk, to see that payrolls were made out in strictly proper form and that they contained only names of men who actually worked for time credited, and to use great care in seeing that all vouchers and payrolls were made out in proper form, and that they in every way conformed to certificate on same; and deponent heard Mr. Sterly assure Capt. Carter that no departures from regulations were made and that all papers relating to office work were correct in every particular.

PARKER F. HARRINGTON.

On the eleventh day of October, A. D. 1897, personally appeared the above named Parker F. Harrington, to me well known and known to me to be the individual described in and who executed the foregoing affidavit and thereupon made oath to the truth of the same.

Before me,

THOMAS F. KENNY,
(Seal) *Notary Public within and for the County of Suffolk and Commonwealth of Massachusetts aforesaid.*

State of Georgia,
Chatham County.

Before me personally appeared J. C. Heyward, who being duly sworn deposes and says: That he is a resident of Chatham County, Georgia; that he has been employed as recorder of dumping of dredged material in Savannah harbor; that as such he has dumped such material in the Venus Point Dumping Ground; that no such deposits were ever made in the

vicinity of the steamboat channel, and that the orders given to him by the United States Engineer's Office expressly prohibited any material being dumped where it might interfere with the navigation of said channel.

J. C. HEYWARD.

Sworn to and subscribed before me this 7th day of October, 1897.

W. V. DAVIS,
(Seal) *Notary Public, Chatham Co., Ga.*

State of Georgia,
Chatham County.

Before me personally appeared Jas. F. Kelly, who being duly sworn deposes and says: That he is a resident of Chatham County, Georgia; that he has been employed as recorder of dumping of dredged material in Savannah harbor; that as such he has dumped such material in the Venus Point Dumping Ground; that no such deposits were ever made in the vicinity of the steamboat channel, and that the orders given to him by the United States Engineer's Office expressly prohibited any material being dumped where it might interfere with the navigation of said channel.

JAS. F. KELLY.

Sworn to and subscribed before me this 9th day of October, 1897.

W. RUSSELL, JR.,
(Seal) *N. P. and Ex.-O. J. P., C. Co., Ga.*

State of Florida,
County of Nassau.

Before me personally appeared H. H. Linville, President Board of Pilot Commissioners, who being duly sworn deposes and says: That he is a resident of Fernandina, Fla.; that he knows Marion Twiggs, who was Cap't. Carter's assistant on the government work at Fernandina; that he has often spoke with said Twiggs concerning the work under Cap't. Carter's charge, and that said Twiggs has stated to deponent that the government work was being well and properly done,

according to the contract, and that the jetty was doing its work and standing well.

H. H. LINVILLE,
President Board Pilot Com.

Sworn to and subscribed before me this 18 day of October, 1897.

GEO. E. WOLFF,
(Seal) *Clerk Circuit Court, Nassau County, Fla.*

State of Georgia,
Chatham County.

Before me in person appeared Thomas H. Laird, junior, who being duly sworn, deposes and says: That he is at present Master and Pilot of steam vessels; that he has been employed at Savannah Harbor since 1878 at intervals; has been in nearly every mattress camp since then; is thoroughly familiar with the country, the timber and brush available, the method of making fascines and mattresses and sinking them, and knows the difficulties and cost attending the same. Deponent is familiar with the fascines and mattresses and the specifications under which they were built in 1892 and 1896. Deponent states that to the best of his knowledge and belief mattresses as actually built in Savannah Harbor under those specifications, in courses on top of one another, cannot be put in the work for less than 80 cents a square yard, except at a loss; in the river or at any place, except on an ocean bar, it is cheaper to a contractor to put in the mattresses in single layers than to build them on top of one another and sink them in that way.

THOS. H. LAIRD, JR.

Sworn to and subscribed before me this 4th day of October, 1897.

W. V. DAVIS,
(Seal) *Notary Public, Chatham County, Georgia.*

State of Georgia,
Chatham County.

Before me in person appeared William F. McCauley, who being duly sworn deposes and says: That he is familiar with the work in Savannah Harbor and in 1892 made a bid for doing the same. Deponent examined the specifications

carefully and had them explained to him by Captain Carter; deponent understood that only the third design of brush mat would be used, those of the other designs, if any, to be very few in number. Low grade stone was to be Florida stone. Deponent knew the kind of fascines and mats used and believes that if it had been known in the beginning that the quantity of mats was to be so largely increased as it was, much higher bids would have been made for them, brush being scarce and the haul great. In deponents judgment it is cheaper and better in the river for a contractor to build the mats one at a time and not on top of each other. The prices bid were very reasonable, and deponent has been on the river ever since and knows that the work has been well done and the results very successful.

W. F. McCauley.

Sworn to and subscribed before me this 6th day of October, 1897.

W. V. Davis,

(Seal) *Notary Public, Chatham County, Georgia.*

State of Georgia,
Chatham County.

Before me personally appeared Thomas H. Laird, junior, who being duly sworn deposes and says: That he was Master of the United States Steam Launch "Angler" when the contract of 1892 in Savannah Harbor was being done; that Captain Carter made inspections of the Government work there and in Fernandina and elsewhere on said launch; that Captain Carter used to call his assistant engineers and inspectors on board the boat and question them about the work and give them orders; that he, deponent, heard many of these conversations and understood them; that deponent heard Captain Carter ask always whether the work was being done properly according to the specifications, and whether the contractors were being watched carefully; and deponent heard Captain Carter ask Mr. A. S. Cooper many times, especially in 1893 and 1894 about the work in Savannah Harbor, and Mr. Cooper answered that the contractors were doing the work according to the specifications. Deponent remembers distinctly that Mr. Cooper said that the contractors were building better mats than required by the specifications, and that he went on to say that any mat good enough for the contractors was good enough for the United States. Deponent has been on the Savannah Harbor for many years and knows

the various Assistants of Captain Carter and has never heard in any manner whatever any intimation that any one of those assistants thought that there was anything wrong with the work. On the contrary in every case every inspector has said that fine work was being done.

THOS. H. LAIRD, JR.

Sworn to and subscribed before me this 7th day of October, 1897.

CHARLES J. WHITE,
(Seal) *Notary Public, Chatham County, Georgia.*

State of New York, }
County of New York. } ss.

R. Moore being duly sworn deposes and says that he resides at Mobile, Alabama.

That his business at present is that of a contractor. He has been engaged in such business for more than twenty years.

That a portion of the contracting work done by him during that time has been upon the Gulf and South Atlantic Coast in the building of jetties for the improvement of entrances to harbors.

That he has also investigated carefully the cost of building such jetties in order to enable him to make bids for other work of the same character.

That the construction of such jetties involved the building and use of brush mats.

That he is thoroughly familiar and knows the cost of building such brush mats for the purpose of building jetties.

That he has seen and is familiar with the location of the work on Savannah River and Harbor.

That he is also familiar with the location of the work at Cumberland Sound.

Deponent further says that from his experience and in his judgment, the cost of any kind of mats in the work in either of these locations would be at least sixty cents per square yard and that such cost would be liable to be considerably increased owing to the condition of the weather, and difficulty in obtaining the material; such increase might be from twenty-five to thirty per cent.

R. MOORE.

Sworn to before me this 7th day of October, 1897.

ROBT. LAWRENCE
Notary Public, Kings Co.

Cert. filed in N. Y. Co.

State of New York, } ss.
County of Kings. }

Personally appeared Martin McGuffog, who being duly sworn deposes and says:

That from about September, 1888, to June 30, 1890, he was employed by Captain O. M. Carter, Corps of Engineers, U. S. A., as foreman of parties engaged in removed snags, logs and overhanging trees in the rivers in the Savannah District, having under his charge at different times a large number of men in the aggregate, for whose time he made out pay-rolls, etc.

That, acting, in such capacity, he heard Captain Carter repeatedly order his Chief Clerk, J. W. O. Sterly, to see that the pay-rolls contained only the names of men who actually worked for the time stated, and to see that under no circumstances should any irregularities in vouchers or pay-rolls be permitted, and deponent heard Mr. Sterly assure Captain Carter that no irregularities or departures from the regulations were made, and that everything was correct in every respect.

MARTIN MCGUFFOG

Sworn to and subscribed before me this 7th day of October, 1897.

GEORGE O'CONNOR
(Seal) *Notary Public.*

State of Georgia. }
Chatham County. }

Personally appeared J. E. Nicholas, being duly sworn deposes and says: that for the past fifteen years or more he has been in the employ of the Atlantic Contracting Company as foreman and as such he has superintended the building of the mats used by said Company in the government harbor works along the Atlantic coast from Philadelphia to Jacksonville, and that deponent probably has had more practical experience in mat building than any other man in the United States: That deponent is very familiar with the government works in the Savannah harbor and river and along the coast of South Carolina and Florida: That the brush fascines used at Savannah and Fernandina were built and choked as required by the printed specifications, and as

well as those built at any other place along the coast, and were accepted by the engineer officers in the several districts and by various inspectors. Deponent further says that in a place like the Savannah harbor it is cheaper to a contractor to build the mats single with poles underneath and above and fascines between them than to build them in layers. That on an ocean bar the method in layers or courses would become somewhat cheaper on account of the sinking. The fascines were all choked by the regulation choking rope or chain, with two handspikes.

J. E. NICHOLAS

Sworn to and subscribed before me this 9 day of October 1897.

(Seal) W. V. DAVIS,
Notary Public, Chatham Co., Ga.

State of Georgia, }
Chatham County. }

Before me personally appeared George H. Palin, who being duly sworn deposes and says: That he is a resident of Chatham County, Georgia; that he has been employed as recorder of dumping of dredged material in Savannah Harbor, that as such he has dumped such material in the Venus Point dumping ground; that the orders given to him by the United States Engineer's Office expressly prohibited any material being dumped where it might interfere with the navigation of said channel, and when on one occasion a load had been accidentally dumped in the channel upon a report being made to the office Captain Carter ordered it dredged out at once, which was done. This is the only instance and was caused by a tugboat colliding with the scow.

GEORGE H. PALIN.

Sworn to and subscribed before me this 7th day of October, 1897.

(Seal) W. V. DAVIS,
Notary Public, Chatham County, Georgia.

State of Georgia, }
Chatham County. }

Before me personally appeared J. H. H. Osborne, who being duly sworn deposes and says: That he is a member of the Board of Tax Assessors and Receivers of the City of Sa-

vannah, and is the Clerk of said Board. Deponent further saith that as Clerk of said Board all of the property returns of the citizens of Savannah come within his knowledge, and that the books of said Board in charge of deponent are the official records of the City with regard to the property of its citizens, and are made up from sworn returns filed with said Board by said citizens.

Deponent further saith that F. A. D. Hancock and James Foley are citizens and residents of the City of Savannah. Deponent further saith that said F. A. D. Hancock owns no real estate in said city and pays no taxes to said city upon any real estate; and that the only property owned by said F. A. D. Hancock on which he pays taxes to said city consists of household furniture, etc. valued at one hundred dollars; and that a sworn return was filed by said F. A. D. Hancock with said Board of Tax Assessors and Receivers in which the said Hancock states on oath that he owns no other property save the household furniture aforesaid to the value of one hundred dollars as aforesaid.

Deponent further saith that the records of said city show that the said James Foley owns no property at all; and that the said James Foley returns nothing and pays no taxes.

J. H. H. Osborne

Sworn to and subscribed before me this 13th. day of October, 1897.

W. V. Davis

(Seal) *Notary Public, Chatham County, Georgia.*

State of New York
City and County of New York } ss.

Roderick G. Ross personally appeared who being duly sworn deposes and says that he has been a contractor for over twenty years.

That during that period he has been extensively engaged in constructing and superintending the construction of brush fascines and mattresses at various places on the South Atlantic Coast under contract with the United States Government.

That from personal inspection and examination, he is thoroughly familiar with the locality and all the conditions existing in relation to the government work at Cumberland Sound.

That he examined the specifications for the work at Cum-

berland Sound, which was to be let in 1894 and made a bid for the doing of the same.

That deponent's bid at that time was for certain reasons made very low.

That in the year 1896 deponent again examined the specifications for the work, at Cumberland Sound and prepared a bid for the work, but on account of the financial condition of the country, did not submit it.

Deponent knows how the brush fascines and mats were to be built at Cumberland Sound under the contract of 1894 and they are alike in all respects to those to be built under the contract let in 1896.

That deponent knows that the construction of the fascines at Cumberland Sound under the contract of 1894, were properly built and like those built by deponent under his contract at Mayport.

The mats at Cumberland Sound were built on top of one another and as well built as those built by deponent at Mayport, but in deponent's judgment each mat cost a little more per yard to the contractors to build in that way than singly as at Mayport.

But the sinking was a little cheaper if the contractor had good luck, so on the whole the cost was about even.

In deponent's judgment it cost the contractor ten to twenty per cent more for mattresses at Cumberland than at Mayport on account of exposure and strong currents and other difficulties.

That deponent fully understood how the mats were to be built and sunk before the bidding at Cumberland Sound in 1896.

Deponent knew also that fourth class rock was to be Florida rock.

That in deponent's judgment, the three designs of mats cost about the same. The brush ones, however, cost something more than the log ones, but deponent was of opinion that the third class mats were the ones intended to be used in the work.

Deponent was upon the occasion of this bid was given full and free information of all facts required by him.

That the prices for the work as finally let at Cumberland Sound are in deponent's judgment reasonable and fair.

RODERICK G ROSS

Sworn to before me this 13 day of October 1897

PHILIP M. BRETT

Notary Public N. Y. Co.

State of Georgia, }
Chatham County. }

Before me personally appeared James C. Rossiter, who being duly sworn deposes and says; that he is a resident of Chatham County, Georgia; that on February 29th., 1896 he was employed as recorder of dumping of dredged material in Savannah Harbor; on that date two scows were deposited in the Venus Point dumping ground; that neither of these was deposited in the vicinity of the steamboat channel between Savannah and Beaufort; that no such deposits were ever made in the vicinity of that channel, and that the orders given to deponent expressly prohibited any material being dumped where it might interfere with the navigation of said channel.

JAMES C. ROSSITER

Sworn to and subscribed before me this 4th. day of October, 1897.

W. V. DAVIS

(Seal) *Notary Public, Chatham County, Georgia.*

State of South Carolina }
Charleston County }

Personally appeared before me J B Sanford who being duly sworn deposes and says, that he is an experienced contractor and that he is familiar with the character of the mats used in the government works along the south Atlantic coast; that he knows the difficulties and cost attending the construction and sinking of the same; that in comparatively smooth water there is no gain to a contractor to build and sink mats in courses on top of one another; that he knows the prices paid at Savannah, and Fernandina, and the kind of mats used, and in his opinion, the prices were reasonable and the work could not have been done for less money.

J B SANFORD

Subscribed and sworn to before me this 4th October 1897

M. T. LANIGAN

(Seal) *Notary Public for S. C.*

State of North Carolina }
Co of New Hanover }

Personally appeared Samuel W Skinner who being duly sworn deposes and says, that he is an experienced contractor and that he is familiar with the character of the mats used in the government works along the south Atlantic coast; that he knows the difficulties and cost attending the construction and sinking of the same; that in comparatively smooth water there is no gain to a contractor to build and sink mats in courses on top of one another; that he knows the prices paid at Savannah and Fernandina, and the kind of mats used, and in his opinion, the prices were reasonable and the work could not have been done for less money.

G W SKINNER

Sworn to and subscribed before me this Oct 5/97

ALEX. S. HEIDE,
Notary Public

(Seal)

State of Georgia, }
Chatham County. }

Personally appeared, Charles Sweeny who being duly sworn, deposes and says that he is master and pilot of steam vessels and has been working on the Savannah River since 1875. Deponent further says that he is familiar with all mattress work ever done in Savannah Harbor, and has seen fascines and mats built there and elsewhere. The fascines and mats were as well built in 1897 as in the beginning of the work. Deponent has been told further by Mr. A. S. Cooper many times, and as late as 1897, that the fascines and mats in Savannah Harbor were properly made according to the requirements of the contract.

CHARLES SWEENY

Sworn to and subscribed to before me this 19th day of October, 1897.

W. V. DAVIS
Notary Public, Chatham County, Ga.

(Seal)

State of Georgia. }
Chatham County. }

Before me personally appeared W. T. Toschach, who being duly sworn deposes and says: That he is a resident of Chatham County, Georgia; that he has been employed as recorder of dumping of dredged material in Savannah Harbor; that as such he has dumped such material in the Venus Point Dumping Ground; that no such deposits were ever made in the vicinity of the steamboat channel, and that the orders given to him by the United States Engineer's Office expressly prohibited any material being dumped where it might interfere with the navigation of said channel.

W. T. TOSCHACH

Sworn to and subscribed before me this 8 day of October, 1897.

W. V. DAVIS

(Seal) *Notary Public, Chatham Co., Ga.*

State of North Carolina }
Co of New Hanover }

Personally appeared Thomas E Wallace who being duly sworn deposes and says, that he is an experienced contractor and that he is familiar with the character of the mats used in the government works along the south Atlantic coast; that he knows the difficulties and cost attending the construction and sinking of the same; that in comparatively smooth water there is no gain to a contractor to build and sink mats in courses on top of one another; that he knows the prices paid at Savannah and Fernandina, and the kind of mats used, and in his opinion, the prices were reasonable and the work could not have been done for less money.

THOS E WALLACE

Sworn to & subscribed before me this Oct 5/97

ALEX S. HEIDE,

(Seal) *Notary Public*

State of New York }
County of Onondaga } ss:

Personally appeared Myron J. Wheeler who being duly sworn deposes and says that he has been building mats for sixteen years at various places along the Atlantic coast. He was foreman in charge of building and making mats at Savannah Harbor between 1892 and 1896 and in charge of making mats at Fernandina in 1896 and 1897. The mats and fascines at Savannah and Fernandina were built according to the specifications. In the winter of 1892 or spring of 1893 the mats in Savannah Harbor were built on top of one another and when built that way to replace a set of grillage poles each mat contained more fascines and cost more than when built singly. Deponent examined thoroughly the mats and fascines made by Mr. Ross under Capt. Black at Mayport. The fascines at Fernandina in 1897 were just like them but each mat course at Fernandina contained more fascines than a single mat did at Mayport for reasons given above. The fascines in 1897 were made according to the specifications and just like all fascines have been made since deponent first saw them built, and the mats were built as well at the end as at the beginning of the work. They were properly made in every respect. Deponent was told further by Mr. Marion Twiggs that the mats and fascines at Fernandina in 1896 and 1897 were made according to the specifications and that they were satisfactory.

M. J. WHEELER

Sworn to and subscribed before me this 16" day of October 1897.

J. J. L. BAKER
Notary Public

(Seal)

State of Georgia. }
Chatham County. }

I, Robert L. Colding, Deputy Clerk of the City Court of Savannah, do hereby certify that the case of James B. Brown against the Atlantic Contracting Company, was tried in the City Court of Savannah at the February 1897 Term thereof before the following jury:

H. B. Bacon, (foreman),	Lumber Manufacturer.
R. D. MacDonell,	Retail Grocer.
W. P. Guerard,	Collector.
D. B. Lunday,	Dry Goods Clerk.
W. H. Folliard,	Plumber.
Troup D. Perry,	Railroad Clerk.
Jno. J. Conlin,	Gas Works, Foreman.
Jno. B. Law,	Cotton Warehouseman.
E. M. Perry,	Retail Grocer.
Barron Carter,	Bank Officer.
Walter E. Coney,	Naval Stores Clerk.
Thos. G. Ronan,	Bank Clerk.

In Witness Whereof, I have hereunto set my hand and the seal of said Court at Savananh, Georgia, this October 16th, 1897.

ROBT. L. COLDING
(Seal) *Deputy Clerk, City Court of Savannah.*

State of Georgia }
Chatham County }

Before me in person appeared E. M. Perry who being duly sworn deposes and says that he was one of the jurors who tried the case of James B. Brown against the Atlantic Contracting Company which was tried in the city court of Savannah at the February Term 1897 of said court in which case Capt. O. M. Carter was summoned as a witness by the defendant.

Deponent further says that he has never had any conversations whatever with Capt. Gillette the Army Engineer Officer now in charge at Savannah, and consequently has never stated to Capt. Gillette that Capt. Carter changed the harbor lines at quarantine nor anything of that sort, nor which

could in any manner bear such a construction directly or indirectly.

E. M. PERRY

Sworn to and subscribed before me at Savannah this October 15th 1897

RANDOLPH ANDERSON
(Seal) *Notary Public Chatham Co Ga*

W. W. Chisholm, President. R. F. Burdell, Cashier.
Chas. S. Ellis, V. Prest. H. A. Charlton, Ass't Cash'r.
The Chatham Bank,
Organized 1889
Capital $150,000.00 Surplus & Undivided Profits $35,000.00.
Depository of the City of Savannah
Lieber's Code used. Savannah, Ga. October 15th 1897

Before me personally appeared Barron Carter who being duly sworn deposes and says that he was one of the jurors who tried the case of Jas B. Brown against the Atlantic Contracting Company which was tried in the City Court of Savannah at the February Term 1897 of said Court. Deponent further says that Capt. Gillette, the U. S. Engineer Officer at present in charge at Savannah has approached him to try to ascertain something about Capt. O. M. Carter the former Engineer Officer here who was a witness for the defendant in said case.

Deponent further says that he has never on any occasion stated to Capt. Gillette that Capt. Carter changed the harbor lines at quarantine so as to allow the Atlantic Contracting Company or Gaynor to get stone cheap—nor has deponent ever made any statement to Capt Gillette which could in any manner be twisted into meaning such a thing.

BARRON CARTER

Sworn to and subscribed before me at Savannah Georgia this October 15th 1897

J. RANDOLPH ANDERSON
(Seal) *Notary Public Chatham Co Ga*

Organized 1870

John Flannery, Prest.
Horace A. Crane, V. Pres't.
James Sullivan, Cashier.

Capital, $500,000.
Surplus, $400,000.

Southern Bank
Of The State of Georgia.
Depository of the State.

Savannah, Ga. October 15th 1897

Before me personally appeared Thomas G. Ronan who being duly sworn deposes and says that he is employed in the Southern Bank in said city and that he was one of the jurors who tried the case of Jas B. Brown against the Atlantic Contracting Company which was tried in the City Court of Savannah at the February Term 1897 of said Court.

Deponent further saith that Capt Gillette the U. S. Engineer Officer now in charge at Savannah has recently approached him and tried to ascertain something about Capt. O. M. Carter the former Engineer Officer here who was summoned as a witness by the defendant in said case.

Deponent further saith that he has never on any occasion stated to Capt. Gillette that Capt. Carter changed the harbor line at quarantine so as to allow the contractor or either of the Gaynors or any one else to get stone cheap—nor has deponent ever made any statement of any kind to Capt Gillette which could in any manner bear such a contruction directly or indirectly.

THOS. G. RONAN

Sworn to and subscribed before me at Savannah Ga this October 15th 1897

J. RANDOLPH ANDERSON
(Seal) *Notary Public Chatham Co. Ga.*

State of Georgia, }
Chatham County. }

Before me in person appeared Walter E. Coney who being duly sworn deposes and says: That he was one of the jurors who tried the case of James B. Brown against The Atlantic Contracting Company, which was tried in the City Court of Savannah at the February Term, 1897, of said Court.

Deponent further saith that Captain Gillette, the United States Engineer officer now in charge at Savannah has re-

cently approached him and tried to ascertain something about Captain O. M. Carter, the former Engineer officer here, who was summoned as a witness by the defendant in said case.

Deponent further saith that he has never on any occasion stated to Captain Gillette that Captain Carter changed the harbor line at quarantine so as to allow the contractors, or either of the Gaynors, or any one else to get stone cheap; nor has deponent ever made any statements of any kind to Captain Gillette which could in any manner bear such a construction directly or indirectly.

WALTER E. CONEY.

Sworn to and subscribed before me at Savannah, Georgia, this October 15th., 1897.

HENRY H. BRUEN
(Seal) *Notary Public Chatham County, Georgia.*

State of Georgia,
Chatham County.

Before me in person appeared D B Lunday who being duly sworn deposes and says: That he was one of the jurors who tried the case of James B. Brown against The Atlantic Contracting Company, which was tried in the City Court of Savannah at the February Term, 1897, of said Court.

Deponent further saith that Captain Gillette, the United States Engineer officer now in charge at Savannah has recently approached him and tried to ascertain something about Captain O. M. Carter, the former Engineer officer here, who was summoned as a witness by the defendant in said case.

Deponent further saith that he has never on any occasion stated to Captain Gillette that Captain Carter changed the harbor line at quarantine so as to allow the contractors, or either of the Gaynors, or any one lese to get stone cheap; nor has deponent ever made any statements of any kind to Captain Gillette which could in any manner bear such a construction directly or indirectly.

D B LUNDAY

Sworn to and subscribed before me at Savannah, Georgia, this October 15th., 1897.

J. RANDOLPH ANDERSON
(Seal) *Notary Public Chatham County, Georgia.*

State of Georgia, }
Chatham County. }

Before me in person appeared W. P. Guerard who being duly sworn deposes and says: That he was one of the jurors who tried the case of James B. Brown against The Atlantic Contracting Company, which was tried in the City Court of Savannah at the February Term, 1897, of said Court.

Deponent further saith that Captain Gillette, the United States Engineer officer now in charge at Savannah has recently approached him and tried to ascertain something about Captain O. M. Carter, the former Engineer officer here, who was summoned as a witness by the defendant in said case.

Deponent further saith that he has never on any occasion stated to Captain Gillette that Captain Carter changed the harbor line at quarantine so as to allow the contractors, or either of the Gaynors, or any one else to get stone cheap; nor has deponent ever made any statements of any kind to Captain Gillette which could in any manner bear such a construction directly or indirectly.

W. P. GUERARD

Sworn to and subscribed before me at Savannah, Georgia, this October 15th., 1897.

J. RANDOLPH ANDERSON

(Seal) *Notary Public Chatam County, Georgia.*

State of Georgia, }
Chatham County. }

Before me in person appeared John James Conlin who being duly sworn deposes and says: That he was one of the jurors who tried the case of James B/ Brown against The Atlantic Contracting Company, which was tried in the City Court of Savannah at the February Term, 1897, of said Court.

Deponent further saith that Captain Gillette, the United States Engineer officer now in charge at Savannah has recently approached him and tried to ascertain something about Captain O. M. Carter, the former Engineer officer here, who was summoned as a witness by the defendant in said case.

Deponent further saith that he has never on any occasion stated to Captain Gillette that Captain Carter changed the

harbor line at quarantine so as to allow the contractors, or either of the Gaynors, or any one else to get stone cheap; nor has deponent ever made any statements of any kind to Captain Gillette which could in any manner bear such a construction directly or indirectly.

JOHN JAMES CONLIN

Sworn to and subscribed before me at Savannah, Georgia, this October 15th., 1897.

J. RANDOLPH ANDERSON

(Seal) *Notary Public, Chatham County, Georgia.*

State of Georgia, }
Chatham County. }

Before me in person appeared R D MacDonell who being duly sworn deposes and says: That he was one of the jurors who tried the case of James B. Brown against The Atlantic Contracting Company, which was tried in the City Court of Savannah at the February Term, 1897, of said Court.

Deponent further saith that Captain Gillette, the United States Engineer officer now in charge at Savannah has recently approached him and tried to ascertain something about Captain O. M. Carter, the former Engineer officer here, who was summoned as a witness by the defendant in said case.

Deponent further saith that he has never on any occasion stated to Captain Gillette that Captain Carter changed the harbor line at quarantine so as to allow the contractors, or either of the Gaynors, or any one else to get stone cheap; nor has deponent ever made any statements of any kind to Captain Gillette which could in any manner bear such a construction directly or indirectly.

R D MACDONELL

Sworn to and subscribed before me at Savannah, Georgia, this October 15th., 1897.

J. RANDOLPH ANDERSON

(Seal) *Notary Public Chatham County, Georgia.*

State of Georgia, }
Chatham County. }

Before me in person appeared J. B Law who being duly sworn deposes and says: That he was one of the jurors who tried the case of James B/ Brown against The Atlantic Contracting Company, which was tried in the City Court of Savannah at the February Term, 1897, of said Court.

Deponent further saith that Captain Gillette, the United States Engineer officer now in charge at Savannah has recently approached him and tried to ascertain something about Captain O. M. Carter, the former Engineer officer here, who was summoned as a witness by the defendant in said case.

Deponent further saith that he has never on any occasion stated to Captain Gillette that Captain Carter changed the harbor line at quarantine so as to allow the contractors, or either of the Gaynors, or any one else to get stone cheap; nor has deponent ever made any statements of any kind to Captain Gillette which could in any manner bear such a construction directly or indirectly.

J. B. Law

Sworn to and subscribed before me at Savannah, Georgia, this October 15th., 1897.

J. Randolph Anderson

(Seal) *Notary Public, Chatham County, Georgia.*

State of Georgia, }
Chatham County. }

Before me in person appeared Troup D. Perry who being duly sworn deposes and says: That he was one of the jurors who tried the case of James B/ Brown against The Atlantic Contracting Company, which was tried in the City Court of Savannah at the February Term, 1897, of said Court.

Deponent further saith that Captain Gillette, the United States Engineer officer now in charge at Savannah has recently approached him and tried to ascertain something about Captain O. M. Carter, the former Engineer officer here, who was summoned as a witness by the defendant in said case.

Deponent further saith that he has never on any occasion stated to Captain Gillette that Captain Carter changed the harbor line at quarantine so as to allow the contractors, or

either of the Gaynors, or any one else to get stone cheap; nor has deponent ever made any statements of any kind to Captain Gillette which could in any manner bear such a construction directly or indirectly.

TROUP D. PERRY

Sworn to and subscribed before me at Savannah, Georgia, this October 15th., 1897.

J. RANDOLPH ANDERSON

(Seal) *Notary Public, Chatham County, Georgia.*

State of Georgia, }
Effinham County. }

Before me in person appeared W. H. Follaird who being duly sworn deposes and says: That he was one of the jurors who tried the case of James B. Brown against The Atlantic Contracting Company, which was tried in the City Court of Savannah at the February Term, 1897 of said Court, and in which case Captain O. M. Carter was summoned as a witness by the defendant.

Deponent further saith that he has never on any occasion stated to Captain Gillette that Captain Carter changed the harbor line at quarantine so as to allow the contractors, or either of the Gaynors, or any one else to get stone cheap; nor has deponent ever made any statements of any kind to Captain Gillette which could in any manner bear such a construction directly or indirectly.

W. H. FOLLAIRD

Sworn to and subscribed before me at Meldrim, Georgia, this 16th. day of October, 1897.

W F CARTER

Notary Public, and ex-officio Justice of the Peace, Effingham County, Ga.

State of Georgia. }
Chatham County. }

Before me personally appeared H. H. Bacon, who being duly sworn deposes and says: That he was one of the jurors who tried the case of James B. Brown against the Atlantic Contracting Company, which was tried in the City Court of Savannah at the February Term, 1897, of said Court.

Deponent further saith that Captain Gillette, the United

States Engineer officer now in charge at Savannah, recently approached deponent and endeavored to ascertain from deponent whether Captain O. M. Carter, the former Engineer officer here, who was summoned as a witness by the defendant in said case, had not testified in a certain manner which Captain Gillette outlined or suggested to deponent.

Deponent further saith that he was a member of the City Council of Savannah during the two years, 1895 and 1896, and in answer to a question by Captain Gillette so informed the latter. Deponent further saith that the conversation between Captain Gillette and himself then turned on the change made at quarantine during that City Administration and the sale of certain stone ballast there by the City which was bought in by the contractors doing the harbor work; deponent told Captain Gillette that deponent thought Captain Carter had treated the City badly about that stone, because deponent thought that Captain Carter could have postponed or prevented the demand made on the City by the War Department to change the Quarantine Station so as to conform to the harbor lines that had been laid down by the Government.

Deponent further says that he did not state to Captain Gillette that Captain Carter had made any changes in the harbor line at quarantine, and deponent did not mean to give Captain Gillette the impression that Captain Carter's action on that occasion was actuated by any improper motive. Deponent did not make any such statement or charge and did not intend to be understood as charging Captain Carter with any collusion with the contractors, nor that the quarantine station was required to be changed for the purpose of enabling the contractors to purchase cheap the stone ballast there. All that deponent intended to say to Captain Gillette, and all that deponent now says, is that the change required at quarantine station made it necessary, in deponent's judgment, for the City to sell the rock ballast that had accumulated there; and that there was no other purchaser in the market for said rock except the harbor contractors who had consequently purchased it at a very cheap figure; and further that Captain Carter had treated the City badly in requiring the change to be made at Quarantine, deponent's belief being that Captain Carter could have prevented the War Department from requiring the same if he had so desired.

Deponent further says that the facts leading up to the change at Quarantine, according to the best of deponent's

knowledge and belief, are as follows:—During the time that deponent was an alderman the City received notice from Captain Carter, then the Engineer Officer in charge here, that certain changes would have to be made at quarantine station at once, that is, within sixty days, so as to conform to the established harbor lines. These changes according to the best of deponent's recollection consisted in certain alterations to the runway and to portion of the wharf and the removal of stone ballast all of which were inside the harbor lines, that is, on the channel side of the harbor lines. This notice from Captain Carter was discussed by City Council and it was decided to let the matter run as long as possible, so no action was taken by council in regard to Captain Carter's notice and no steps were taken to comply with it. Some time afterwards a communication was received by the City from the War Department in Washington requiring that the Quarantine Station lines should be immediately changed to conform with the harbor lines laid down by the Government. The City thereupon went ahead and exposed for sale the stone ballast that had accumulated at Quarantine, which ballast was bought in by the harbor contractors at a figure which deponent considered very cheap. At the time theCity was considering the communication of the War Department above referred to Captain Carter by request appeared before the City Council in Committee of the Whole bringing with him his maps showing the harbor lines and so forth, and stated to the Committee that all rock ballast lying inside the harbor lines at Quarantine would have to be removed. Captain Carter also stated at said Committee meeting that it was contemplated or proposed to carry on the harbor works at that point at once, and this as deponent understood was the reason for the demand made by the War Department. But since the removal of said ballast the City has not been required to make any other changes as far as deponent is aware and on this is based deponent's belief that Captain Carter could have postponed or prevented the action of the War Department

Deponent further saith that he is aware that the harbor lines referred to by Captain Carter's notice and by the communication from the War Department had been laid down and established several years previously by the Government, and that one of the City administrations prior to the one in which deponent served had located this quarantine station with full knowledge of the fact that it was in violation of the harbor lines and after notice from the engineer officer to that

effect; and that the City had arranged through the Engineer Officer or through the War Department to go ahead and establish the station in the manner desired by it on condition that the City would immediately remove the station on notice from the War Department or make any changes in it needed to have it conform to the harbor lines whenever the Government so required.

HAL H. BACON

Sworn to and subscribed before me at Savannah Ga this October 16th 1897

J. RANDOLPH ANDERSON
(Seal) *Notary Public Chatham Co Ga*

(Endorsed) Office, Chief of Engineers War Department, Nov. 13, 1897 22530/71

State of Florida }
County of Desoto }

Personally appeared James A. Bryan who being duly sworn deposes and says, that he is an experienced contractor and knows the difficulties attending jetty work and the cost thereof. Deponent has made and seen made, log mats brush fascines and brush mats at various places on the South Atlantic coast. He is familiar with the mat work done at Mayport and at Fernandina and with the specifications for them. Deponent knows the three kinds of mats described in the specifications and knows they cost about the same a square yard. The log mat, if anything, being a little cheaper. Deponent has seen mats built on top of one another at Fernandina in 1894 and 1897. The fascines and mats were as well built as any deponent has ever seen. It costs a little more a square yard to build mats on top of one another as they built them at Fernandina, than to build single mats, but in sinking this loss can be made up if the contractor has no accidents so it comes out about the same in both ways. Jetty work at Fernandina costs about a fourth more than at Mayport. The present prices at Ferdandina are reasonable.

Deponent knew that four-class rock at Fernandina was to be Florida rock. Deponent was in Savannah at the opening of the bids in 1896. Every bidder got all information about the works and the specifications were clear and under-

stood by every body and everything about the letting was perfectly fair.

JAMES A. BRYAN.

Sworn to and subscribed to before me this 23rd day of October, 1897.

(Seal)

JNO. H. FARRINGTON,
Notary Public State of Fla. at Large.

(Indorsed) Office Chief of Engineers War Department, Nov 13 1897 22530 202

West Point, New York,
October 20, 1897.

Colonel Geo. L. Gillespie, Corps of Engrs,
President Board of Engineer Officers,
New York.

Colonel

I have the honor to submit the following estimate of the actual cost of constructing and sinking brush mattresses of the kind used at Fernandina, Florida under Captain O. M. Carter Corps of Engrs. The estimate given is for the minimum cost at which the work could be done and for various causes, such as unusually bad weather, poor workmen, inefficient foremen, strikes, scarcity of brush and timber, etc, the work might readily cost 15 or 20 per cent more than here estimated, but I do not believe that it could possibly be done for a cent less.

I give in detail the computation of the cost of every item in order that it may be intelligently criticized, but would wish it to be observed that the price of labor given is commensurate with the tasks assumed and that cheaper labor would accomplish smaller tasks and cost the same in the end.

A fascine 15 ft long and 9″ in diameter at the choke will make 5/3 sq. yds of single course mattress.

One man will cut 4 1/2 cords of brush per day, which will make one load 15 ft long 6 ft wide and 6 ft high, weighing 1000 lbs.

One load will make 12 fascines

The average haul for brush is 1 1/2 miles which gives 6 loads per day

Cutting one load brush 1 day, $1.00

Hauling (to include teams, driver, and help loading and unloading), 5.00 per day for 6 loads or $.833 per load.

Cutting and hauling $1.833 per load of 12 fascines, or .153 for brush in one fascine. (.153

Three men will make 1 fascine in 50 minutes, hence

$$\frac{3\times50\times25}{60\times2}=\$.3125 \text{ for making one fascine.} \quad (.3125$$

Hauling fascines to wharf 30 fascines per load, average haul 1 mile, 8 loads per day, team, driver and help, $5.00 per day for 8×30=240 fascines or per fascine— .0208

Loading fascine lighter,—load to be 4 fascines long, 24 wide and 6 high, 576 fascines; average carry center of wharf to center of lighter 60 ft. for each fascine or 34560 ft. or 6 1/2 miles for 576 fascines, 2 men per fascine, moving at average rate of 1 mi per hr including time for picking up and laying down fascines, 6 1/2 hrs hence

$$\frac{2\times13\times25}{2\times2\times576}= \text{ per fascine} \quad .0028$$

Towing fascine loa[illegible] mattress,—tugboat 3 hrs at $3.00 per hr.=$9.00 for 576 fascines or per fascine— .0156

Laying fascines in mattress, average carry from center of fascine lighter to center of mattress 75 ft. then for load of 576 fascines 576×75=43200 ft.=8.18 miles. Average rate carrying over rough surface of lower courses 3/4 mi per hr. 8.18÷3/4=10.9 hrs, hence

$$\frac{2\times10.9\times25}{576\times\ 2}=.0047 \text{ per fascine} \quad (.0047$$

Poles.

To cut and trim one pole including selecting trees, walking from tree to tree, cutting off large butts etc, 15 minutes per pole or 4 poles per hr.

$$\frac{25}{2\times4}=.0312 \text{ per pole.}$$

Hauling poles:—A pole 30 ft long 5″ at butt and 3″ at top, 40# per cu. ft. weighs 107 lbs. a wagon load of 2240 lbs will contain 21 such poles, average wagon haul for poles, 3 miles, which gives 4 loads per day or 84 poles. Team driver and help $5.00 per day hence

$$\frac{5.00}{84}=\text{per pole} \quad (.0571$$

Loading poles on lighter; load to be 1 pole long 40 wide

10 high or 400 poles: average carry 60 ft. gives 24000 ft or 4.55 miles, rate carrying 1 mi per hr, 3 men to a pole, gives

$$\frac{3\times4.55\times25}{400\times2} = .0043 \text{ for loading per pole} \quad (.0043$$

Towing pole lighter to mattress: two lighters a trip or one large lighter carrying double the above load: tug boat 4 hrs at $3.00 per hr. for 800 poles gives

$$\frac{4\times3.00}{800} = \text{per pole} \quad (.015$$

Laying poles in grillage: average carry from center of lighter to center of grillage 75 ft. $400\times75=30000$ ft or 5.7 miles: rate of carrying over rough surface of lower course ¾ mi. per hr. or 7.6 hrs for 400 poles, 3 men

$$\frac{3\times7.6\times25}{400\times2} = \text{per pole} \quad (.0071$$

Lashing joints of grillage: scarf joint with two lashings for each pole: cross joint lashings at 6 ft. intervals gives 4 lashings per 2 poles and one extra lashing at end and side for every 5 poles, hence 2 scarf lashings and 2 1/5 cross lashings per pole 4 1/5 lashings 2 1/2 minutes each

$$\frac{2\ 1/2\times4\ 1/5\times25}{60\times2} = \text{per pole} \quad (.022$$

Waste: projecting end of one pole in two cut off and not used if less than 12 ft long average waste 6 ft in 2 poles (60 ft)=1/10

For each pole	
Cutting and trimming	.0312
Hauling	.0571
Loading on lighter	.0043
Towing	.015
Placing in grillage	.0071
Lashing joints	.022
	.1367
Waste 1/10	.0137
per pole in grillage	.1504

There will average 70 poles plus waste to 500 sq. yards of mattress or to 300 fascines

70+70/10=77 or 77/300 poles per fascine: cost of one pole .1504.

$\frac{77 \times 1504}{300}$ =for grillage per fascine (.0386

Lashing consecutive grillage together; one lashing to 4 sq yrds mattress, 4 minutes per lashing.

$\frac{4 \times 25 \times 5}{60 \times 2 \times 4 \times 3}$ =per fascine (.0035

Building extra top grillage for every 6 full courses (4 full and 4 half courses)

1/6×.0386=per fascine .0063

Launching towing out and sinking; tug boat 12 hrs at $3.00 per hr. $36.00

50 men, 8 hrs. 12½c. per hr. 50.00 $86.00

4 courses each 300 fascines=1200
4 " " 150 " = 600
8 " 1800 fascines

$\frac{86.00}{1800}$ =per fascine (.0478

For one fascine—

Cutting and hauling brush	$0.153
Labor making fascine	.3125
Hauling	.0208
Loading fascine lighter	.0028
Towing to mattress	.0156
Placing in mattress	.0047
Grillage per fascine	.0386
Lashing consecutive grillages per fascine	.0035
Building top grillage per fascine,	.0063
Launching, towing out and sinking per fasc.	.0478
	$0.6056

Time lost due to interruption of work by storms, waiting for material, repairs, loafing, etc. 12½ per cent			0.0757
Total labor per fascine in work			$0.6813
Plant.			
1 Tug boat		15000	
2 Pole lighters		8000	
2 Fascine lighters		10000	
1 Mattress lighter		6000	39000
		39000	
40 horses @ 100		4000	
20 wagons @ 50		1000	
Stables, sheds, store houses		1000	
		45000	
Interest	10	per cent	
Deterioration	30	" "	
Insurance & taxes	5	" "	
	45	" "	on plant.

45000×.45=20250 per year
= 389.42 per week

Two eight-course mattresses per week or 3600 fascines

$\frac{389.42}{3600}$ =$.1082 per fascine (.1082

For bookkeepers, clerks, superintendents, overseers, foremen, timekeepers, boatmen, blacksmith, machinists, carpenters etc. allow one to every 16 laborers, average pay $2.00 per day which adds 1/8 to labor cost.

1/8×.6813=per fascine— (.0852

Contingencies to include office rent, tools, wire, yard, rope, anchors, wharfage, small boats, buoys, etc. add 10 per cent to labor acct.

1/10×.6813=per fascine— (.0681

Royalties on timber and brush lands. Brush land, $3.00 per acre, timber land 5.00 per acre
1 acre yields 20 loads brush=240 fascines
1 acre yields 50 poles, for every 200 fascines

$\frac{3.00}{240}$ = royalty on brush per fascine = .0125

$\frac{5.00}{200}$ = " " timber " " = .025

" " " " = .0375

Total cost of one fascine in work.

Labor—	0.6813
Interest, deterioration, insurance & taxes—	.1082
Superintendence and skilled labor—	.0852
Contingencies—	.0681
Royalties—	.0375
Cost per fascine—	.9803

One fascine=5/3 sq. yds

.9803÷5/3=	.5883
Loss, 1 mattress in 8	.0740
Minimum Total cost	$0.6623 per sq. yd.

Due to, longer hauls, longer tows, scarcity of brush and timber, bad weather, poor labor, inefficient foremen, accidents, strikes, etc., or to any such cause, the cost might be increased 15 or 20 per cent giving a possible maximum of $0.7948 per sq. yard.

Very respectfully
Your obedient servant

THOS. H. REES.
1st Lieut. Corps of Engrs.

(Endorsed) Office, Chief of Engineers 22530/203 War Department Nov 13 1897 Inclos 145, 146 183 & 202 attached.

CARTER'S REPLY

—to—

THE ARGUMENT OF THE PROSECUTION AGAINST CAPTAIN O. M. CARTER.

New York, October 29, 1897.

Col. G. L. Gillespie,
Maj. C. W. Raymond,
Maj. H. M. Adams,
Corps of Engineers, U. S. A.

Sirs:—

The answer made to my statement concerns itself to so great an extent with the views of my accuser, induced by his unfounded suspicions rather than suggested by any evidence, that I feel at liberty to ignore much which he has written. I shall not concern myself with his views or conclusions save where they involve such misstatements of facts as would deceive the Board, unless attention was directed to them. Such matters as I have in my statement fully gone into I shall for the most part submit without further comment. The various estimates of the witnesses need not be considered at all. They were before the Board, who have doubtless formed their own conclusions in regard to them; their opportunities; their motives, and their experience. It can be neither interesting nor instructive to follow a criticism, for instance, which undertakes to get rid of pertinent testimony by charging the witness with cigarette smoking. Yet this is not an unfair illustration of the system of reasoning by which conclusions involving the character of the witnesses have been reached.

It is difficult to make a rejoinder logically divided into heads since no particular order is preserved in the answer to which this replies. I am, therefore, forced to take such items as I will consider, as I find them.

The claim is made that "the essential part of the principal charge" is that I paid a dollar a square yard for enormuos quantities of brush mattresses whose true value was about one-fifth of that sum.

This subject has been already fully discussed, and it would scarcely seem proper to treat it at length. A mattress seems to have been prepared for this occasion; photographed, and kept in stock for the purpose of having witnesses base their

estimates of the cost of my work thereon. The answer clearly leaves the impression that this mattress was typical, and was selected at haphazard in order to exhibit fairly the character of my work. As a matter of fact, it was constructed during my absence, and after my connection with the work had terminated. Neither the comments of my accuser nor the criticisms of his witnesses under such circumstances can be of the slightest value, save as illustrating the extremes to which these people have gone. A few considerations exhibit the recklessness of the main assertion. He states that the true value of the mattresses was only about twenty cents per square yard. There is no proof of this—it is simply asserted. On the contrary, an expert mattress builder testifies that no mattress can be put into the work for less than sixty cents per square yard, and the true cost of the work as actually done varied from about sixty-five to ninety-five cents per square yard, (P. 29,31). This has been shown conclusively by abundant testimony from men of character and experience, intimately familiar with the work. The last mattress which I saw at Cumberland Sound was about June 1st, 1897. It was built of fascines constructed according to the specifications and well built in every respect. The grillage poles were about five feet apart; were properly lapped and fastened and the fascines were properly jammed together, and the whole system of mattresses properly assembled. Up to that date, the mattresses seen by me had been properly built and as my visits of inspection were made frequently at irregular intervals, and at unexpected times I have reason to believe that all work was properly done. The mattress which my prosecutor claims to have inspected and photographed has nothing in common with what I have described. He states that it required "the closest examination to discover any indication of its "being anything more than a big brush heap squared up at "the corners with a few pine poles laid through the mass"—a description which, if true, would indicate a mass unfit for any purpose whatever in harbor work. He then proceeds to state that "the quality of this mattress was equal to "those previously used" at Cumberland Sound and at Savannah, and then indulges in the remarkable statement that he has "no "engineering objections to any of the mattresses that have "been put in" at Savannah (P. 447), and admits the work is a success. If the work was a success, how could the mattresses have been the worthless things he has described?

In regard to the construction of mattresses and their cost—the only modification from the third design (a modification authorized by the specifications and therefore in accordance with them), is that when the mattresses were built on top of one another a grillage was omitted from each interior mattress and fascines substituted therefor, and extra wire used to bind the mattresses together. What is there in the omission of poles and the substitution therefor of more expensive fascines which suggests that the cost of the work was greatly decreased? As a matter of fact, the cost was increased, as is shown not only by the common sense of the matter but by the testimony of Messrs. Friday, Bryan and Ross, men of character and experienced contractors in just that class of work. These gentlemen are intimately familiar with the mattresses actually constructed by me at Cumberland Sound, as well as with other mattress construction on the South Atlantic Coast.

In his effort to bring the mattresses below their actual cost, the prosecutor finds it necessary to discredit his own witnesses. Captains Black and Gaillard estimated the net cost of brush mattresses of the third design at about sixty-five cents per square yard—the former stating that a contractor at Mayport had failed at a price of seventy cents. Mr. Gieseler estimates the cost of the same mattress at only forty-five cents; Mr. Cooper at thirty-five cents and Mr. Hale at thirty-three cents per square yard. Captain Black estimates the cost of a mattress built according to the description of my prosecutor, a description of a mattress never built or authorized built by me, at about thirty-five cents; Mr. Gieseler at eleven and a half cents; Mr. Cooper at ten cents, and Mr. Keating at eight cents per square yard. My prosecutor asserts that the estimate of Mr. Keating is the most reliable, and yet he arbitrarily doubles the remarkably accordant estimates of his subordinates; strike forty per cent from the estimates of Captains Black and Gaillard, and thus arrives at his assertion that the cost is twenty cents. Of what conceivable value can such estimates be to any one? and yet this is the basis of what my prosecutor declares to be the essential part of his principal charge.

In the effort to discuss with some degree of order what is apparently the first head of the answer, it may be proper to refer again to the choking of the fascines. The form of choker described by Mr. Twiggs I have never seen. It differs from that described as in use in the camps by every one

who has ever been there. The fascines selected for the comparative tests had been lying in the hot sun for three weeks, and many of them had been rejected by the contractor and not intended for use in the work. When subjected by the orders of my prosecutor to such pressure that 1/4 inch chains were broken, the average diameter of the recompressed fascines at Cumberland Sound was only 2.3 inches below the 9 inches required by the specifications (Report Hall), and at Savannah only 2 inches below (Report Hale). It is a fact known to all men familiar with fascine construction that with green brush even the excessive compression used in those tests could not have choked the fascines as originally made below the required diameter of 9 inches. Thus the claim that the fascines accepted contained less brush than required by the specifications, even basing the claim on the defective fascines used in the tests, has utterly failed of proof. What has not failed of proof is that both in regard to the mattress and the fascine the test was unfair in its act and intent, and the only effect could be to deceive those who were unacquainted with the conditions under which they were made. These considerations would seem to cover the general ideas underlying the charge in the first head. It would be interminable to go over in detail all of his conclusions and surmises based upon what his witnesses have said, or even to consider what they have said any further. Thus, every statement of any effect which he recalls in the testimony of the witness Twiggs is untrue, and I have in my former statement discussed this testimony and this witness. If P. E. Twiggs fell through a mattress he never informed me of the occurrence, although the orders to him were specific to accept no mattress even for measurement which did not come up to the requirements of the contract. Hale, who states that the fascines when rechoked for spectacular effect, only fell 2 inches below the specifications, states further that the contractor had to use 3 or 4 bundles of brush to make one fascine of equal length, and then goes on to say that it took 10,000 of those bundles to make 888 fascines, a discrepancy of only about 250% in his two statements.

The testimony of Mr. Woolvin is quoted as showing that the fascines were not properly built (P. 119). This man's remark applies only to fascines in the work at Augusta, made and placed there nearly three years before he saw them, and who, when asked if he ever saw that prior work, stated that he never did (P. 121). Mr. Brown was the engineer in local charge of that work. The fascines were staked to the bank

and the entire contract was carried out exactly as required of Mr. Twiggs, the stone on shore protection was carefully pitched and Mr. Brown has testified that the fascines were built according to the specifications (P. 39), and yet this man Woolvin is seriously brought forward as a reliable witness concerning fascine construction in the Savannah District, when his only statement is based on the appearance of fascines exposed nearly three years in a warm climate to the destructive flood effects of a torrential stream.

There follows a mass of writing devoted to a criticism of the testimony of witnesses as to the cost of the work to the contractors. It would be idle to go over again the testimony on this point. Engineer officers; contractors; inspectors—all those who have a personal knowledge of what they are talking about, and are men of character and standing—are swept aside to make way for such expressions as: "Taking Capt. Black's estimate * * * "the cost of many items is greatly over-estimated"; "Capt. Gaillard's estimate being made with "the same premises as Capt. Black's, is subject to the same "correction"; Lt. Rees' estimate is "out of all reason for the "purposes of this investigation; (when Lieut. Rees was engaged for four years on the very work in question, knew the exact price of labor and was familiar with the mattress actually constructed by me, which type has not changed since); the Gaynors "are interested in the same way that Capt. Car- "ter is, &c. No matter what or who it may be, whenever it or they come in contact with this man's theories he strikes at them blindly, Congress, engineer officers, business men, the Chief of Engineers, this Board, his own witnesses, all imperil their reputation by differing with him. His charity begins with himself and ends with whose who are subserving his purpose—outside of this narrow circle all things are black to him.

In what he calls the second part of the main charge, he concerns himself with the proposition that the excessive prices for mattress work, but which the Chief of Engineers has testified that he recommended, personally, to the Secretary of War for acceptance (P. 821), justify the belief that I was either a stockholder in the contractors' company or otherwise benefitted pecuniarily by my actions. God only knows how little it would take to justify any belief in his mind. As I am not being tried on the belief of this man, I might content myself with calling attention to the fact that there is not a particle of proof to justify this belief in any one's mind. His

first head on this charge in its detail and in its entirety is untrue, including the Foley incident. With the latter I have had no intimacy of any character; never called him a filibusterer, and evidently have had much less to do with him than my accuser. I am informed that he is or was a sailor boarding-house runner, entirely impecunious, and who, as I was informed later, applied for the specifications on a bet of drinks that even he could get them. These are very low depths into which the case has fallen.

The second division of this second head is made up of such glaring misstatements that it need not be seriously considered. I have dealt with it in my former statement, and where any new comment is indulged in it is so trivial that it is not worthy of serious reflection. Under this head, in order to strike at me he found it necessary to assume that the Board of Engineers, who considered the improvement of Cumberland Sound, neglected their duties. Upon this I need not comment. Those gentlemen might well forget, in a multitude of labors, the specific point at issue, but it is incredible that they were so ignorant of their profession and so neglectful of their duties as to have imagined at the time that 425,000 square yards of single-course mattresses 100 feet wide could go into a space of 6,500 linear feet, neither is it possible that their estimates of cost are as absurd as this critic would have appear. This Board is aware that the extension of the mattress work at Cumberland Sound was seaward—farther seaward than such work had ever extended, and, therefore, it will not seem curious to those who understand such work that the judgment of the engineer officer must frequently change until the success of his experiments is assured. It is interesting to note just here that at this point the cost of the mattresses is arbitrarily reduced to fifteen cents, 25% of my prosecutor's own estimates—arrived at with such pains and at the sacrifice of so many other judgments—being summarily stricken off.

I do not know whether it is intended to extract from the discussion of the question of the inside route any conclusion that I am a stockholder with the contracting company, although it seems to come under that head. I have only to reiterate my former statement that the only sensible route was the one I adopted. Its prompt abandonment by my successor at the instance of steamboat men has thrown away some $25,000 of the government's money; and defeats

one of the main objects of the inside route—the construction of a channel for use by government vessels in time of war. It is probably not known to my accuser that Dam No. 31 is of the proper height and that the "similar dams" he refers to are not similar at all. Dam No. 31 is in reality a training wall, and was built to direct the ebb flow from Wright's River over Tybee Knoll. The spur dams to which he refers were built years ago, and rise, many of them, to mid-tide or higher. The effect of their retention at that height cannot but affect the tidal prism. It is imperative to lower their crests. As their removal to mean low water would entail a large cost on the government I endeavored to have the contractors remove them in exchange for the stone, which effort, because of the accumulation of mud and barnacles, they were loath to undertake. If the interest of the river is to be considered, they will have to be removed.

The remarks of my accuser about the dumping in the channel near Venus Point are untrue, as are his remarks about the soundings. These matters have already been discussed by me and are answered by him only by vituperation and by suggestions of concealed information obtained from unknown persons.

The third point relied on to show my interest with the contractors is the threatened work at the Savannah Quarantine station.

If my prosecutor knew the Savannah River, he would know that in case a cut were made across Cockspur Island to thrown the ebb flow from the South Channel across Tybee Knoll, it would be imperatively necessary to remove the projecting point of land at the new quarantine station just above the mouth of such a cut, and that the adopted harbor line is a proper one. As to the necessity for removing the ballast, &c., illegally deposited there, it was expected that the passage of the River and Harbor bill in 1896 would permit quite extensive dredging and one of the first things desired was to open the channel near the quarantine. To be ready to begin the work at once, it was necessary that the material illegally put there be removed. Shortly afterward, when the River and Harbor bill became a law, only $5,000 were made available and the desired work could not be begun. It would have been unjust to the City of Savannah to have deprived it of the use of the quarantine station pending this interval, and hence temporary repairs to existing structures ought to have been authorized. No ballast, however, is permitted to

be deposited beyond the harbor line, and the projecting point should be removed and the new channel opened at the earliest practicable moment. I did not know anything about the details concerning the disposition of the ballast or what it had brought until the report of my accuser and his witness Cooper was made. The matter does not warrant further discussion. The harbor line as established will prevail if any regard is to be had to the interest of the work, and I am not responsible if the cutting off of this jutting land does not commend itself to the reason of my successor.

The Brown case stands on the same footing. There is absolutely no evidence that the rock rejected was ever used in the work, but there is evidence that it was not so used, and yet my accuser has searched Savannah, interviewing jurors in the hope of finding something to my discredit. It will be remembered by the Board that his first position was that one of those jurors had said that I ordered the ballast removed from the quarantine station to benefit the Atlantic Contracting Company. He did not give the name of his informant. This forced me to secure the affidavit of each juror, and the man to whom he now admits he spoke denies the truth of his assertion on oath.

It has been abundantly shown that the presence of inspectors at the mattress camps was not necessary. I will not go over this again but merely remark that whether Mr. Hall stated he "walked around in a mattress" has not been proven, but if he did state that he failed to inform me of it and was derelict in his official duty. Where that was the typical mattress constructed by my successor, I do not know. It is, at least, the only mattress I have ever heard of which could possibly have approximated to that description.

The question of the piling has already been discussed fully. I cannot bandy language with him in regard to the piling replaced by contractors at their oen expense, nor do I care to dwell upon the imaginary statement that the piling was of the cheapest second growth pine.

The sinking of mattresses without proper loads of stone has also been discussed. He evidently is unaware that ten per cent. of the monthly estimates was withheld from payment and would far more than cover any losses. As a matter of fact, such losses did not occur, for the brush to which he refers as littering the shores of Tybee and Daufaskie came from mattresses which went to pieces in the breakers before they went into the work, and which were never paid

for. The whole discussion under this head is a work of fancy.

In regard to the compression of mattresses at Cumberland Sound, I have to state that the reports made to me by my assistant showed no compression and that the work was satisfactory. The statement of my accuser as to cost must be untrue, since it does not agree with that deduced from the profiles submitted to me by this same assistant and submitted by me.

The point about bids without competition answers itself. The instances cited show that there was competition.

So far as the Hutchinson Island matter is concerned, I leave him to struggle with himself. What I stated is in writing. He perverted my written language, and now calls on me to prove what he says is false. As he was not even in Savannah at the time, he can scarcely be considered a witness whose assertion need be noticed.

What follows is his attempt to answer me in regard to what he now calls "irregularities involving little loss to the government", but which were serious enough for him to attack my character upon.

There is a mass of details which he insists upon whenever it occurs to his mind and which it is hard to distribute even under his own headings. With the permission of the Board, I gather them here without particular order and with but brief comment:

1. Whilst he admits that the mattress work of Mr. Twiggs at Augusta was not reduced as he had stated, he insinuates that it was a practical reduction since the stone work was increased. The character of such an attempt at evasion is apparent when it is considered that the stone came from a quarry on the river bank a short distance above the works and could be floated there on barges, the profit on it being far greater than on brush mattresses. Multiple mattresses were used by Mr. Twiggs where the depth of water permitted.

2. Of his criticism upon the cost of the Cumberland Sound improvement, it is sufficient to say that that subject was reported upon by a Board of officers of the Corps of Engineers, and the estimates of cost submitted by that Board approved by the Chief of Engineers who had formerly been the Division Engineer and was thoroughly familiar with the locality. The officer who was the Chief of Engineers has testified before this Board that the present prices are "the lowest bids,"

"within the estimate" & "my recommendation is that they be accepted" (p. 821). The comparative values of those estimates and his criticism need not be commented upon.

3. The statement that the present system of building mattresses was inaugurated since the summer of 1893 iw not true. It was inaugurated during the winter of 1892-3 and has not since changed. The method of launching has been improved, but no change has taken place in the method of construction.

4. His assertion that what was said in regard to prominent citizens was brought up wholly by me is not true. His testimony appears on page 432 and shows that in answer to my question whether he had spoken to any one, he deliberately and without reason stated that prominent citizens had come to him—a statement which apparently has the name of no prominent citizen behind it.

5. What degree of pressure he has brought upon his subordinates I do not undertake to say, but no one can read Mr. Cooper's letter of August 7th, purporting to be a simple answer to one sent him the preceding day, without becoming convinced that it was not an answer to that letter at all, but to something else. See also in this connection the affidavit of Mr. Daniels.

6. In answer to his assertion that he had nothing "to do with the newspapers getting hold of the charges", it might be well for this Board to inspect his official copy of the very order creating the Board, with a view of ascertaining whether it bears the file marks of a typesetter in a newspaper office.

7. If it is at all pertinent, it may be stated that my reprimand to Mr. Ensey was due to his carelessness in making his reports, and had no reference to his character or fidelity. This is clearly indicated by attention being called to his erasures. Lieut. Rees was sent to examine into the matter, and his report was satisfactory.

8. As to the Hirt matter, it has already been shown that the funds belonged to Mr. Hirt, and there is no more reason why that $132.10 should be reported to the government than the other funds received from and used for Mr. Hirt. The vouchers for the expenditure of that sum should go to Mr. Hirt, just as the vouchers for the previous expenditures went to him.

9. The statement that an ocean steamer could go through a pile training wall is true, but it is scarcely necessary to remind this Board that a light pile structure designed to make

a silt-bearing river form new banks should not be designed or constructed to resist the ramming effect of an ocean steamer.

10. Regarding the work at Fernandina characterized as disgraceful by this man, the value of his criticism becomes apparent when it is remembered that that work has been carried on in accordance with the recommendations of Boards of Officers of the Corps of Engineers and with the approval of the Chief of Engineers.

In general it appears that my prosecutor has deliberately undertaken, for reasons best known to himself, to do all that he can to besmirch my character, and that when he has failed to find evidence he satisfies his suspicious mind by reinforcing his attempt with his own bald assertions and coarse epithets. I must, as a consequence, believe this man quite capable of going to any extreme to accomplish his end, and I am not called upon to accept any unsupported statement made by him as true, and do not, nor am I called on to consider such a man as his clerk as a corroborating witness for any one.

At the conclusion of his paper, my prosecutor sums up his accusations under two heads, (1) That a large sum of money has been lost to the government and (2) That large sums have been found in my possession.

As to the first, the discussion and the evidence must have demonstrated the utter baselessness of the charge. On the contrary, it has been demonstrated that large sums of money have been saved to the government and that up to the time of my departure the work was a signal success, meeting with the approbation of my superiors and of the people benefitted.

As to the second, it is stated falsely and is false in its intention. I desire to recall with emphasis that there are no facts from which this conclusion can be drawn. There is not a work of evidence—there is not a suggestion of evidence—that one cent of the money which I have controlled and used for years has ever come to my hands improperly. The only thing in support of this charge is the statement of my accuser as his belief, which he seems to think is made stronger by reiterating it. At the instance of this accuser my private papers were seized, including even the letters of condolence on the death of my wife, and the business papers of my father-in-law. That I had no objection to their inspection by this Board does not condone his act. This Board found them in the possession of the government when it

reached Savannah, and as embarrassing as it must have been to them, I appreciated their position and frankly tendered them for their private inspection. But the fact remains that after I had obtained permission, before the arrival of the Board, to retake them, this permission was revoked at the instance of this prosecutor. At the time, I was a Captain of Engineers, military attaché to one of the principal embassies of the United States and a member of one of the important commissions of the government. Apart from the obvious consideration which would be due to any individual—no matter how humble his station—it would seem to have been demanded that so far from being adjudged guilty on the bare statement of an inferior made in a letter evidently prepared for him, I should have been reckoned at least not guilty until some evidence of my guilt was forthcoming. At the conclusion of the hearing, as at its inception, the theory seems to be that because I have had money therefore I must have obtained it improperly, and in the effort to establish such a violent conclusion all of my private transactions have been inquired into, and nothing has been found on which to base it. The demand is still made that by some inscrutable means I must compel Mr. Westcott to appear before this Board possibly to be subjected at his age to the insulting interrogations of my accuser concerning his private affairs. This I neither can do, nor am I willing longer to endeavor to do.

He has replied to me & I have submitted his reply to this Board that the transactions to which I have referred and by which I had the handling and control of large sums of money were had with and for him. I have submitted his powers of attorney, which placed at my disposal his entire fortune. In my efforts to afford the Board all the information in my power, I have possibly disregarded his rights and exhibited another man's private business to the Board and to my accuser.

I have explained at length my relations with him and at my requests oft repeated, his brokers have written letters which have been submitted to the Board explaining as far as they felt they were justified, my relations to his account with them.

In this matter, not a statement of mine has been contradicted, not a paper produced by me has been incorrect, not a witness in my behalf has been impeached and yet the Board is asked to find that my statements are false, those papers

untrue, and that I am guilty of a crime, solely because of the unsupported belief or statement of belief of my accuser. The evidence I have submitted and my action before the Board was in the face of the fact that there is not one word of testimony that any of this money has been received from any one improperly and in face of the fact that those transactions were my business and Mr. Westcott's and concerned no other human being alive. In answer to this painful and humiliating action on my part, which to any dispassionate mind anywhere will seem gratuitous, I am still met by the clamor of my accuser that because I had the control of money therefore it was wrongfully obtained. If the fact of this insistance were not to be found coarsely stated in his reply, it would seem incredible. It establishes the precedent that any idle or malicious person is at liberty at any time without any evidence whatever to assail with impunity the reputation of any officer. I have gone so much farther in this matter than even the most exactly should have required, that I go no farther. The fact that I had money and the control of money was not kept secret by me, but has been a matter known to many for years. I have explained where it came from, and this explanation has been substantiated by the man from whom it came. I now denounce the repeated assertion that those moneys were dishonestly acquired as a base slander, inviting upon its proposer the contempt of every honest man. I cannot leave the statement to which this is a reply without a word further. Starting out with the gravest accussations against a brother officer, it has degenerated into vituperation which cannot affect me in the judgment of right minded men and must react on my accuser. That the circumstances under which it is written leaves me powerless to resent it otherwise than in this reply, does not make the burden of it lighter; however these circumstances may have acted upon the mind and conduct of my accuser. Certainly the character of his reply should leave no doubt in the minds of a Board composed of officers and gentlemen that it is not the truth which he seeks to exploit, but the opportunity of venting his spleen where it can presumably be done in safety.

O M Carter
Capt. Corps Engr U S A

(Endorsed) Office, Chief of Engineers War Department, Nov. 13, 1897 22530/74



In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

United States of America
vs.
Oberlin M. Carter *et al.*
} In Equity No. 25980

Appealed April 28, 1908 to U. S. Circuit Court of Appeals for Seventh Judicial Circuit.

Identified as Volume 2 of Transcript of record on appeal.

Dated, Chicago, Illinois, this 11th day of September, A. D. 1908.

H. S. STODDARD,
Clerk.

(Seal)

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

United States of America *vs.* Oberlin M. Carter *et al.*	Appeal No. 1534 and Cross-Appeal No. 1535 at Oct. Term 1908.

Appealed May 26, 1909, to the Supreme Court of the United States. Identified as Volume 2 of Transcript of Record on Appeal.

Dated, Chicago, Illinois, this 12th day of June, A. D. 1909.

EDWARD M. HOLLOWAY,

(Seal) *Clerk U. S. C. C of Appeals.*

VOL. 3

TRANSCRIPT OF RECORD.

(Volume 3 of Record includes testimony in Vols. 1, 2 and 3 of original Court Martial record.)

Pages 1055 to 1574.

IN THE

Supreme Court of the United States

No.

THE UNITED STATES OF AMERICA,

Appellants,

vs.

OBERLIN M. CARTER, LORENZO D. CARTER, I. STANTON CARTER, HORACE G. STONE, NATHANIEL C. SEARS, THE INTERNATIONAL AUDIT COMPANY, ROBERT NELSON, AND LYMAN E. COOLEY,

Appellees.

Appeal from the Circuit Court of Appeals of the United States for the Seventh Circuit.

1 PROCEEDINGS OF A GENERAL COURT-MARTIAL, WHICH CONVENED AT SAVANNAH, GEORGIA, PURSUANT TO THE FOLLOWING ORDER:

Special Orders,
No. 282

Headquarters of the Army,
Adjutant-General's Office,
Washington, December 2, 1897.
Extract.

The following order has been received from the War Department:

War Department, Washington, December 2, 1897.

By direction of the President, a general court-martial is appointed to meet at Savannah, Georgia, at 11 o'clock A. M., on Wednesday, January 5, 1898, or as soon thereafter as practicable, for the trial of Captain Oberlin M. Carter, Corps of Engineers, and such other persons as may be brought before it.

Detail for the Court.

Brigadier-General Elwell S. Otis, U. S. Army,
Colonel Jacob Kline, 21st Infantry,
Lieutenant-Colonel Samuel M. Mansfield, Corps of Engineers,
Lieutenant-Colonel Henry C. Hasbrouck, 4th Artillery,
Major William S. Stanton, Corps of Engineers,
Major John L. Tiernon, 1st Artillery,
Major Charles A. Woodruff, Commissary of Subsistence,
Major William S. Patten, Quartermaster,
Captain Daniel M. Taylor, Ordnance Department,
Captain Samuel M. Mills, 5th Artillery,
Captain Charles G. Penney, 6th, Infantry,
Captain Theodore F. Forbes, 5th Infantry,
Captain Richard P. Strong, 4th Artillery,
Lieutenant-Colonel John W. Clous, Deputy Judge-Advocate-General, Judge-Advocate.

The Court is empowered to proceed with the business before it with any number of members present not less
2 than the minimum prescribed by law.

R. A. Alger,
Secretary of War.

Upon the final adjournment of the court the members thereof will, by direction of the Secretary of War, return to

their proper stations. The travel enjoined is necessary for the public service.

By command of Major-General Miles;

SAM'L BRECK,
Adjutant-General.

Special Orders
No. 306.

Headquarters of the Army,
Adjutant-General's Office,
Washington December 31, 1897.
Extract.

6. The following order has been received from the War Department:

War Department, Washington, December 30, 1897.

By Direction of the President, the meeting of the general court-martial at Savannah, Georgia, appointed by War Department Order of December 2, 1897, published in paragraph 3, Special Orders, No. 282, December 2, 1897, from Headquarters of the Army, is postponed until January 12, 1898, or as soon thereafter as practicable.

G. D. MEIKLEJOHN,
Acting Secretary of War.

By Command of Major-General Miles:

H. C. CORBIN,
Acting Adjutant-General.

Special Orders,
No. 1.

Headquarters of the Army,
Adjutant-General's Office,
Washington, January 3, 1898.
Extract.

10. The following order has been received from the War Department:

War Department, Washington, January 3, 1898.

By direction of the President, Colonel Thomas F. Barr, Assistant Judge-Advocate-General, is detailed as judge advocate of the general court martial appointed to meet at Savannah, Georgia, by War Department order of December 2, 1897, published in paragraph 3, Special Orders, No. 282, December 2, 1897, from Headquarters of the Army, vice Lieutenant-Colonel John W. Clous, Deputy Judge-

Advocate-General, hereby relieved at his own request on account of sickness.

G. D. MEIKLEJOHN,
Acting Secretary of War.

By Command of Major-General Miles:

H. C. CORBIN,
Acting Adjutant-General.

Special Orders,
No. 4.

Headquarters of the Army,
Adjutant-General's Office,
Washington, January 6, 1898.
Extract.

13. The following order has been received from the War Department:

War Department, Washington, January 6, 1898.

By direction of the President, Major John R. Myrick, 5th Artillery, is detailed as a member of the general court martial appointed to meet at Savannah, Georgia, by War Department order of December 2, 1897, published in paragraph 3, Special Orders, No. 282, December 2, 1897, from Headquarters of the Army, vice Captain Theodore F. Forbes, 5th Infantry, who is hereby relieved.

G. D. MEIKLEJOHN,
Acting Secretary of War.

By Command of Major-General Miles:

SAM'L BRECK,
Adjutant-General.

United States Court Room.
Savannah, Georgia, January 12, 1898.

The court met pursuant to the foregoing orders at 11 o'clock A. M.

Present:

Brigadier-General Elwell S. Otis, U. S. Army.
Colonel Jacob Kline, 21st Infantry.
Lieutenant-Colonel Samuel M. Mansfield, Corps of Engineers.
Lieutenant-Colonel Henry C. Hasbrouck, 4th Artillery.
Major William S. Stanton, Corps of Engineers.
Major Charles A. Woodruff, Commissary of Subsistence.
Major John R. Myrick, 5th Artillery.

Major John L. Tiernon, 1st Artillery.
4 Major William S. Patten, Quartermaster.
Captain Daniel M. Taylor, Ordnance Department.
Captain Samuel M. Mills, 5th Artillery.
Captain Charles G. Penney, 6th Infantry.
Captain Richard P. Strong, 4th Artillery.
Colonel Thomas F. Barr, Assistant Judge-Advocate-General, judge-advocate.

The court then proceeded to the trial of Captain Oberlin M. Carter, Corps of Engineers, who being before the court, introduced Walter G. Charlton, Abram J. Rose, Frank P. Blair and W. W. Mackall as counsel.

George T. Cann was duly sworn as reporter.

The order convening the court was read to the accused, and he was asked if he objected to being tried by any member present named therein; to which he replied in the negative.

The members of the court and the judge-advocate were then duly sworn.

The accused was then arraigned upon the following charges and specifications:

* * * * *

55 The court then, at forty minutes past one o'clock p. m., adjourned to meet at eleven o'clock, a. m., tomorrow.

THOMAS F. BARR,
Col. & Asst. Judge Adv. Genl., Judge Advocate.

56

United States Court Room,
Savannah, Georgia,
January 13, 1898.

The Court met pursuant to adjournment at 11 o'clock A. M.

Present: All the members of the Court and the Judge-Advocate, the accused and his counsel and the reporter were also present.

Judge-Advocate: (To the Court), Mr. President, I am about to introduce the Assistant-Treasurer of the United States at New York, Mr. Jordan. It is rather out of the order in which he would be called naturally in the case and solely for the purpose of identifying certain checks which may hereafter be submitted in evidence. I desire to have it understood by the Court that they are not at this stage submitted as evidence, but that they are now to be identified my him to allow him to return to his duties in New York where the vast interests of the Government are in his care.

By the President: The Witness can be introduced.

CONRAD N. JORDAN, a witness for the prosecution, was duly sworn and testified as follows:

Direct Examination.

Questions by the Judge-Advocate.

Q. Please state your name, and official designation?

A. Conrad N. Jordan, Assistant-Treasurer of the United States at New York.

Q. In your official capacity, you are the custodian of the checks paid checks, drawn upon the Sub-Treasury at New York?

A. I am.

Q. Correspondence has been had with you in regard to certain checks issued by Oberlin M. Carter of the Corps of Engineers?

A. Yes, sir.

Q. And you have been requested to bring them with you?

A. I have.

Q. You have them with you?

57 A. Yes, sir. These are the checks. I have here the official order requiring me to bring them if you desire it.

Q. Your presence is ample. I hand you check, please state the number and date of that check, in whose favor it was drawn, by whom signed, and for what amount?

A. It is under date of November 17, 1892, its number is 200,265, it was drawn to the order of The Atlantic Contracting Company, John F. Gaynor, President, for $3,265.61. It is signed by O. M. Carter, Captain Corps of Engineers, I think it is, and endorsed by the Atlantic Contracting Company, John F. Gaynor, President, and by subsequent endorsers, do you desire those?

Q. I will ask you one question, can you tell from the check itself whether it was paid over the counter of the Sub-Treasury or through the Clearing House?

A. I can.

Q. How was that paid?

A. That was paid through the Clearing House to the 4th National Bank of the City of New York, the date of payment is upon the face.

By the President: What is the date of that check?

A. November 17, 1892.

By Mr. Blair: What is the amount?

A. $3,265.61.

Mr. Rose: We don't find that in the charges and specifications.

The Judge-Advocate: I simply want to identify these checks, they are not offered as evidence.

Q. Please give the same information in regard to that check?

A. Number 200,268. Its date is December 3, 1892. It was drawn to the order of The Atlantic Contracting Company, John F. Gaynor, President, by O. M. Carter, Captain of Engineers, I cant read it. The Atlantic Contracting Company endorsed it, but as before, it goes through the Fourth National Bank for the sum of $5,000.00.

Q. Paid when?

A. Paid on December 5, 1892.

Q. Please respond in regard to that check?

58 A. Number 200,302. Drawn December 16, 1892, drawn to the order of the Atlantic Contracting Company, John F. Gaynor, President, signed by O. M. Carter, Captain of Engineers, for the sum of $8,507.45, and endorsed "Pay to the order of William F. Gaynor, by the Atlantic Contracting Company, The Fourth National Bank of the City of New York. as before, paid December 20, 1897 or 1892 I mean, 1892, but it is blurred.

Q. Please give the same information in regard to that check?

A. This is Number 200,308, dated December 31, 1892, to the order of the Atlantic Contracting Company, John F. Gaynor, President, for the sum of $20,000.00, drawn by O. M. Carter, Captain of Engineers. This was cashed over the counter of the Sub-Treasury through the medium of the American Exchange National Bank.

Q. Please inform the court, Mr. Jordan, how you determine the fact that it was paid over the counter and not through the Clearing House?

A. The banks all place upon the back of the check the Clearing House stamp, paid through the Clearing House of the City of New York, and the endorsement is signed by one of the officers of the Bank, in this case the party through whom that was drawn I'll assume was brought to the Bank by a messenger of the American Exchange National Bank with the signature of the Cashier of the American Exchange National Bank, he identified the gentleman who presented it and we paid it in cash over our counter. There are two dis-

tinct methods of payment, one through the Clearing House and one in cash.

Q. Please give the same information in regard to that check?

A. This is numbered 200,312, under date January 12, 1893, drawn to the order of the Atlantic Contracting Company, John F. Gaynor, President, for the sum of $25,416.81, and it is endorsed as before. I dont suppose the particulars are needed. Paid the Fourth National Bank, Paid through the Clearing House January 23, 1893.

Q. Please give the same information in regard to that check?

A. Number 200,322, dated February 4, 1893, to the order of the Atlantic Contracting Company, John F. Gaynor, President, for the sum of $37,722.83, drawn by O. M. Carter, Captain Corps of Engineers for deposit Atlantic Contracting
59 Company. It was deposited in the American Exchange National Bank, and paid that Bank Feb. 11, 1893.

Q. Give the same information in regard to that check.

A. This is No. 224375, dated March 6, 1903; pay to the order of the Atlantic Contracting Co., John F. Gaynor, Prest., for the sum of $34,985.47. Drawn by Oberlin M. Carter, Captain Corps of Engineers and indorsed by the Atlantic Contracting Co., and the American Exchange National Bank, and paid March 14, 1893.

Q. That was paid over the counter?

A. That was paid through the Clearing House.

Q. Give the same information in regard to that check.

A. The number of this is 224382, dated March 31, 1893, drawn to the order Atlantic Contracting Co., John F. Gaynor, Prest., for the sum of $37,070.49, by O. M. Carter, Capt. Corps of Engineers, indorsed by the Atlantic Contracting Co., and paid the Assistant Cashier the American Exchange National bank, and paid over the counter of the Clearing House, April 4, 1893.

Q. Please give the same information in regard to that check.

A. No. 224385, being under date April 3, 1893, drawn to the order of The Atlantic Contracting Co., John F. Gaynor, Prest., for the sum of $20,584.51, by O. M. Carter, Capt. Corps Engineers, indorsed Atlantic Contracting Co., John F. Gaynor, Prest., and paid over the counter in cash, and indorsed for recognition by the Cashier of the American Exchange National Bank, date of payment April 14, 1893.

Q. Give the same information in regard to that check.

A. 224409, dated May 2, 1893, to the order of the Atlantic Contracting Co., John F. Gaynor, Prest., for the sum of $30,000, drawn by O. M. Carter, Captain Corps of Engineers, U. S. A., indorsed by the Atlantic Contracting Co., and by the American Exchange National Bank, paid May 9, 1893.

Q. Please give the same information in regard to that check.

A. The number is 224417, dated May 31, 1893, to the order The Atlantic Contracting Co., Edward H. Gaynor, Treasurer, for the sum of $6,105.69, drawn by O. M. Carter, Captain
60 Corps Engineers, endorsed by the Contracting Company and paid over the counter on June 5, 1893.

Q. Please give the same information in regard to that check?

A. This is number 224418, dated June 3, 1893, to the order The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $3,309.40, drawn by O. M. Carter, Captain Corps Engineers, endorsed by the National Park Bank with another Bank endorsement and then paid on July 31, 1893.

Q. I understand you to say when a check has been paid over the counter you will so state?

A. I will so state.

Q. I also understand from your testimony that when you state that a check has been paid over the counter that it has been paid in currency?

A. Correct.

Q. Please give the same information in regard to that check?

A. 224439, dated July 3, 1893, to the order of the Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $3,595.38, drawn by O. M. Carter, Captain of Engineers endorsed by the contracting Company and paid in cash over the counter.

Q. Please give the same information in regard to that check?

A. Number 224437, dated July 3, 1893, drawn to the order The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $3,000.00, so endorsed and paid over the counter in cash.

Q. Paid when?

A. Paid on July 11, 1893.

Q. There seems to have been a change in the character of that check?

A. Simply an alteration made on the face of it on approval and so certified by Captain Carter, amount corrected to $3,000.00, $3,000.00 Captain O. M. Carter, of course, signed as before. A correction permitted by the regulation.

Q. Of course. Please give the same information in regard to that check?

61 A. 224438, dated July 3, 1893, to the order of The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $7,558.83, drawn by Captain O. M. Carter, Corps of Engineers and endorsed by that Company and paid in cash over the counter on July 11, 1893.

Q. Give the same information in regard to that?

A. 224431, dated July 3, 1893, to the order of The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $5,968.18, by O. M. Carter, Captain Corps of Engineers, endorsed and paid in cash over the counter on July 11, 1893.

Q. Give the same information in regard to that, sir.

Q. This is number 224432, dated July 3, 1893, drawn to the order The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $34,177.94, drawn by O. M. Carter, Captain Corps Engineers and deposited in the American Exchange National Bank, paid on July 12, 1893.

Q. Give the same information in regard to that?

A. Number 224449, dated August 3, 1893, drawn to the order of the Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $39,075.00, drawn by O. M. Carter, Captain Corps of Engineers, and paid in cash over the counter on August 7, 1893.

Q. Give the same information in regard to that, sir.

A. 224433, dated July 3, 1893, drawn to the order of The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $46,592.39, by O. M. Carter, Captain Corps Engineers, and paid in cash over the counter July 11, 1893.

Q. Give the same information in regard to that?

A. Number 224450, August 3, 1893, to the order The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $5,700.47, drawn by O. M. Carter, Captain Corps Engineers, and paid to the National Park Bank on August 17, 1893.

Q. Give the same information in regard to this check?

A. Number 224451, dated August 3, 1893, to the order

of the Atlantic Contracting Company, Edward H. Gaynor,
62 Treasurer, for the sum of $5,000.00, drawn by O. M. Carter, Captain Corps of Engineers, and paid over the counter on August 14, 1893.

Q. Please give the same information in regard to that check?

A. Number 224461, dated September 1, 1893, to the order of the Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $77,975.00, drawn by O. M. Carter, Captain Corps of Engineeres, endorsed by this firm and paid the American Exchange National Bank September 7, 1893.

Q. Please give the same information in regard to that?

A. Number 224462, dated September 1, 1893, to the order of The Atlantic Contracting Company, Edward H. Gaynor, Treasurer for the sum of $4,500.00, drawn by O. M. Carter, Captain Corps of Engineers, endorsed by that Company and paid to the National Park Bank on September 26, 1893.

Q. Please give the same information in regard to that check?

A. This is number 224463, dated September 1, 1893, to the order of the Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $4,500.00, drawn by O. M. Carter, Captain Corps of Engineers, and paid to the National Park Bank on September 19, 1893.

Q. Please give the same information in regard to this check?

A. Number 224502, dated October 2, 1893, to the order of the Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $5,554.84, drawn by O. M. Carter, Captain Corps of Engineers, and paid to the National Park Bank on October 9, 1893.

Q. Please give the same information in regard to this check I hand you?

A. Number 224503, October 2, 1893, to the order The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $6,850.00, drawn by O. M. Carter, Captain Corps of Engineers, and paid to the National Park Bank on October 13, 1893.

Q. Please give the same information in regard to this check?

A. Number 224504, dated October 2, 1893, pay to the order the Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $7,075.00 drawn by O. M. Car-
63 ter, Captain Corps Engineers, and paid to the National Park Bank October 13, 1893.

Q. Please give the same information in regard to this?

A. Number 224505, dated October 2, 1893, pay to the order of the Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $17,075.00, drawn by O. M. Carter, Captain Corps of Engineers and deposited in the American Exchange National Bank. Paid to that Bank on October 11, 1893.

Q. Please give the same information in regard to this?

A. Number 224506, dated October 2, 1893, pay to the order of The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $19,000.00, drawn by O. M. Carter, Captain Corps of Engineers, and collected through the American Exchange National Bank, and paid to them on that date, October 13, 1893, paid to that Bank rather.

Q. Please give the same information in regard to this one?

A. Number 224554, November 3, 1893, pay to the order of the Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $18,000.00, drawn by O. M. Carter, Captain Corps Engineers, endorsed by them and paid to the American Exchange National Bank November 8, 1893.

Q. Please give the same information in regard to that?

A. Number 224,555, dated November 3, 1893, to the order The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $14,000.00, drawn by O. M. Carter, Captain Corps of Engineers, and paid through the New York Clearing House to the American Exchange National Bank on February 12, 1894.

Q. Please give the same information in regard to this one?

A. Number 224599, dated December 1, 1893, to the order of the Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $1,000.00, drawn by O. M. Carter, Captain Corps of Engineers, paid the American Exchange National Bank on March 9, 1894.

Q. Please give the same information in regard to this one?

A. Number 224600, dated December 1, 1893, for the sum of $6,150.00, drawn by O. M. Carter, Captain Corps of Engineers, and paid to the National Park Bank on December 5, 1893.

64 Q. Please give the same information in regard to this one?

A. Number 224601, dated December 1, 1893, to the order The Atlantic Contracting Company, Edward H. Gaynor,

Treasurer, for the sum of $23,075.00, drawn by O. M. Carter, Captain Corps Engineers, paid the American Exchange National Bank, New York, on December 5, 1893.

Q. Please give the same information in regard to that one?

A. Number 224602, dated December 1st, 1893, to the order The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $40,000.00, drawn by O. M. Carter, Captain Corps of Engineers, and paid to the American Exchange National Bank on December 5, 1893.

Q. Give the same information in regard to this one?

A. Number 224643, dated January 2, 1894, to the order The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $1,000.00, drawn by O. M. Carter, Captain Corps of Engineers, paid through the American Exchange National Bank on March 9, 1894.

Q. Please give the same information in regard to this one?

A. Number 224644, dated January 2, 1894, to the order The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $6,000.00, drawn by O. M. Carter, Captain Corps of Engineers, and paid through the American Exchange National Bank, January 9, 1894.

Q. Give the same information in regard to this check?

A. Number 224645, dated January 2, 1894, paid to the order of the Atlantic Contracting Company, Edward H. Gaybor, Treasurer, for the sum of $6,000.00, drawn by O. M. Carter, Captain Corps of Engineers, paid through the American Exchange National Bank, January 9, 1894.

Q. Please give the same information in regard to this one?

A. Number 224646, dated January 2, 1894, to the order of The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $22,500.00, drawn by O. M. Carter, Captain Corps of Engineers, and paid the American Exchange National Bank, January 9, 1894.

Q. Please give the same information in regard to this one?

A. Number 224650, January 5, 1894, to the order The Atlantic Contracting Company for the sum of $15,075.00, drawn by O. M. Carter, Captain Corps of Engineers, and paid
65 through the American Exchange National Bank January 9, 1894.

Q. Please give the same information in regard to this one?

A. Number 224695, dated February 2, 1894, to the order of the Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $30,000.00, drawn by O. M. Car-

ter, Corps of Engineers, and paid through the American Exchange National Bank February 1, 1894.

Q. Please give the same information in regard to this one?

A. Number 224696, dated February 2, 1894, to the order The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $24,000.00, drawn by O. M. Carter, Captain Corps Engineers, and paid to the American Exchange National Bank, February 6, 1894.

Q. Please give the same information in regard to this one?

A. 224697, dated February 2, 1894, to the order The Atlantic Contracting Company, for the sum of $1,000.00, drawn by O. M. Carter, Captain Corps of Engineers, paid the American Exchange National Bank on March 9, 1894.

Q. Please give same information in regard to this one?

A. Number 224730, dated March 1, 1894, to the order the Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $5,555.22, drawn by O. M. Carter, Captain Corps of Engineers. Paid to the National Park Bank March 10, 1894.

Q. Please give the same information in regard to this one?

A. Number 224731, dated March 1, 1894, to the order the Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $1,000.00, drawn by O. M. Carter, Captain Corps of Engineers, paid to the American Exchange National Bank March 9, 1894.

Q. Please give the same information in regard to this one?

A. 224732, dated March 1, 1894, to the order the Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $24,075.00, drawn by O. M. Carter, Captain Corps of Engineers and paid the American Exchange National Bank March 6, 1894.

Q. Please give the same information in regard to this one?

A. Number 269217, dated July 7, 1894, pay to the order the Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $90,000.00, drawn by O. M. Car-
66 ter, Captain Corps of Engineers, paid through the American Exchange National Bank, on July 10, 1894.

Q. Please give the same information in regard to this one?

A. Number 269218, dated July 7, 1894, to the order The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $80,000.00, drawn by O. M. Carter, Captain Corps of Engineers, and paid to the American Exchange National Bank on July 10, 1894.

Q. Please give the same information in regard to this one?

A. Number 269219, dated July 7, 1894, to the order The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $12,000.00, drawn by O. M. Carter, Captain Corps Engineers, and paid to the National Park Bank on July 10, 1894.

Q. Please give the same information in regard to this one.

A. Number 269220, dated July 7, 1894, for the sum of $4,000.00, drawn by O. M. Carter, Captain Corps of Engineers, paid through the First National Bank of the City of New York on August 10, 1894. The Atlantic Contracting Company, Edward H. Gaynor, Treasurer.

Q. Please give the same information in regard to this one?

A. Number 269258, dated September 8, 1894, to the order The Atlantic Contracting Company, John F. Gaynor, President, for the sum of $100,000.00 (One Hundred Thousand Dollars) drawn by O. M. Carter, Captain Corps of Engineers, and paid in cash over the counter, the date of payment September 10, 1894.

Q. Please give the same information in regard to that check?

A. Number 269258, dated September 8, 1894, to the order The Atlantic Contracting Company, John F. Gaynor, President, for the sum of $100,000.00, drawn by O. M. Carter, Captain Corps of Engineers, endorsed by the American Exchange National Bank, paid to them on September 11, 1894.

Q. Please give the same information in regard to that one?

A. Number 269251, dated September 8, 1894, drawn to the order the Atlantic Contracting Company, John F. Gaynor, President, for the sum of $2,000.00, by O. M. Carter, President, for the sum of $2,000.00, by O. M. Carter, Captain Corps Engineers, and paid the American Exchange National Bank on January 5, 1895.

67 Q. It is understood by you, Mr. Jordan, that you do not give all that appears on the back of them—of those checks?

A. I simply relate the final payee.

Judge-Advocate (To counsel for the accused): I simply wish to notify counsel that if anything else appear that it shall not be considered a discrepancy.

Counsel for the accused: We understand that.

Q. Please give the same information in regard to this check?

A. Number 269252, dated September 8, 1894, to the order of the Atlantic Contracting Company, John F. Gaynor, Presi-

dent, for the sum of $5,000.00, drawn by O. M. Carter, Captain Corps of Engineers, paid to the American Exchange National Bank on September 11, 1894.

Q. Please give the same information in regard to this one?

A. Number 269253, dated September 8, 1894, to the order of the Atlantic Contracting Company, John F. Gaynor, President, for the sum of $43,328.17, drawn by O. M. Carter, Captain Corps of Engineers, and paid to National Park Bank on September 19, 1894.

Q. Please give the same information in regard to this one?

A. Number 269254, dated September 8, 1894, to the order of The Atlantic Contracting Company, John F. Gaynor, President, for the sum of $45,817.23, by O. M. Carter, Captain Corps of Engineers, paid to the Fourth National Bank of the City of New York.

Q. The date of payment?

A. September 19, 1894.

Q. Please give the same information in regard to this one?

A. Number 269256, dated September 8, 1894, to the order of The Atlantic Contracting Company, John F. Gaynor, President, $55,683.71, by O. M. Carter, Captain Corps of Engineers, paid the American Exchange National Bank on September 11, 1894.

Q. Please give the same information in regard to this one?

A. Number 269255, dated September 8, 1894, to the order of the Atlantic Contracting Company, John F. Gaynor, President, for the sum of $52,510.75, by O. M. Carter, Captain Corps of Engineers and paid in cash over the counter.

68 Q. At what date?

A. Beg your pardon, September 10, 1894.

Q. Please give the same information in regard to this one?

A. Number 269257, dated September 8, 1894, to the order of the Atlantic Contracting Company, John F. Gaynor, President, for the sum of $58,735.11 by O. M. Carter, Captain Corps of Engineers, and paid to the Chase National Bank of New York September 18, 1894.

Q. Please give the same information in regard to this one?

A. Number 269273, dated October 2, 1894, to the order of the Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $1,000.00 by O. M. Carter, Captain Corps of Engineers, and paid to the American Exchange National Bank January 5, 1895.

Q. Please give the same information in regard to this one.

A. Number 269274, dated October 2, 1894, to the order of

the Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $12,250.00 by O. M. Carter, Captain Corps of Engineers, paid to the American Exchange National Bank October 6, 1894.

Q. Please give the same information in regard to this one?

A. Number 269275, dated October 2, 1894, to the order of The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $15,325.00 by O. M. Carter, Captain Corps of Engineers, paid through the National Park Bank October 24, 1894.

Q. Please give the same information in regard to this one.

A. Number 269276, dated October 2, 1894, to the order of The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $24,075.00 by O. M. Carter, Captain Corps of Engineers, and paid to the American Exchange National Bank on October 6, 1894.

Q. Please give the same information in regard to this one.

A. Number 269277, dated October 2, 1894, to the order of The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $26,750.00 by O. M. Carter, Captain Corps of Engineers, and paid to the American Exchange National Bank New York on October 9, 1894.

Q. Please give the same information in regard to this one.

69 A. Number 269286, dated November 9, 1894, to the order of the Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $1,000.00 by O. M. Carter, Captain Corps of Engineers, paid to the American Exchange National Bank on January 5, 1895.

Q. Please give the same information in regard to this one.

A. Number 269287, dated November 9, 1894, to the order of the Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $6,875.00 by O. M. Carter, Captain Corps of Engineers, and paid to the American Exchange National Bank November 13, 1894.

Q. Please give the same information in regard to this one.

A. Number 269288, dated November 9, 1894, to the order of the Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $10,000.00 by O. M. Carter, Captain Corps of Engineers, paid the American Exchange National Bank November 13, 1894.

Q. Please give the same information in regard to this one.

A. Number 269289, dated November 9, 1894, to the order

of the Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $13,200.00 by O. M. Carter, Captain Corps of Engineers, paid to the American Exchange National Bank on November 13, 1894.

Q. Please give the same information in regard to this one.

A. Number 269290, dated November 9, 1894, to the order of the Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $13,228.92 by O. M. Carter, Captain Corps of Engineers, and paid to the National Park Bank November 28, 1894.

Q. Please give the same information in regard to this one.

A. Number 269293, dated December 5, 1894, to the order of the Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $23,000.00, by O. M. Carter, Captain Corps of Engineers, and paid to the American Exchange National Bank December 12, 1894.

Q. Please give the same information in regard to this one.

A. Number 269294, dated December 5, 1894, to the order of the Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $15,603.72, paid to the National Park Bank on December 10, 1894.

Q. Please give the same information in regard to this one.

70 A. Number 269396, dated January 11, 1895, to the order The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $1,000.00, by O. M. Carter, Captain Corps of Engineers, and paid to the National Union Bank January 14, 1895.

Q. Please give the same information in regard to this one.

A. Number 269397, dated January 11, 1895, to the order of The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $9,368.67 by O. M. Carter, Captain Corps of Engineers, and paid to the National Union Bank January 14, 1895.

Q. Please give the same information in regard to this one.

A. Number 269398, dated January 11, 1895, to the order of the Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $29,000.00 by O. M. Carter, Captain Corps of Engineers and paid to the American Exchange National Bank on January 18, 1895.

Q. Please give the same information in regard to this one.

A. Number 269418, dated February 1, 1895, to the order of the Atlantic Contracting Company, Edward H. Gaynor,

Treasurer, for the sum of $30,000.00 and paid to the American Exchange National Bank February 5, 1895.

Q. Please give the same information in regard to this one.

A. Number 269425, dated March 2, 1895, to the order of the Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $1,000.00 by O. M. Carter, Captain Corps of Engineers, paid to the National Park Bank March 13, 1895.

Q. Please give the same information in regard to this one.

A. Number 269426, dated March 2, 1895, to the order of the Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $24,612.62 by O. M. Carter, Captain Corps of Engineers and paid to the National Park Bank March 12, 1895.

Q. Please give the same information in regard to this one.

A. Number 269438, dated April 5, 1895, to the order The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $1,000.00 by O. M. Carter, Captain Corps of Engineers, and paid to the National Park Bank on June 26, 1895.

71 Q. Please give the same information in regard to this one.

A. Number 269439, dated April 5, 1895, to the order of The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $10,000.00 by O. M. Carter, Captain Corps of Engineers, paid to the National Park Bank on May 6, 1895.

Q. Please give the same information in regard to this one.

A. Number 269440, dated April 5, 1895, to the order of the Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $12,316.32 by O. M. Carter, Captain Corps of Engineers, paid to the National Park Bank April 11, 1895.

Q. Please give the same information in regard to this one.

A. Number 269441, dated April 5, 1895, to the order of the Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $25,000.00 by O. M. Carter, Captain Corps of Engineers, and paid to the American Exchange National Bank April 9, 1895.

Q. Please give the same information in regard to this one.

A. Number 269442, dated April 5, 1895, to the order of the Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $15,340.18 by O. M. Carter, Captain Corps of Engineers, and paid to the American Exchange National Bank on April 9, 1895.

Q. Please give the same information in regard to this one.

A. Number 269453 (269453), dated May 4, 1895, to the order of the Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $19,860.08 by O. M. Carter, Captain Corps of Engineers, paid the American Exchange National Bank on May 23, 1895.

Q. Please give the same information in regard to this check.

A. Number 200267, dated November 17, 1892, to the order of E. H. Gaynor for the sum of $1,092.32 paid through the Fourth National Bank City of New York November 21, 1892.

Q. Please give the same information in regard to this check.

A. Number 200301, dated December 16, 1892, to the order of E. H. Gaynor for the sum of $21,102.67 by O. M. Carter, did I neglect to state before Captain Corps of Engineers and paid in cash over the counter.

72 Q. At what date?

A. On January 3, 1893.

Q. Please give the same information in regard to this one.

A. Number 200309, dated December 31, 1892, to the order of Edward H. Gaynor for the sum of $21,492.78 by O. M. Carter, Captain Corps of Engineers, and paid in cash over the counter January 3, 1893.

Q. Please give the same information in regard to this one.

A. Number 200311, dated January 5, 1893, to the order of Edward H. Gaynor for the sum of $493.59 by O. M. Carter, Captain Corps of Engineers, and paid through the Fourth National Bank January 24th, 1893.

Q. Please give the same information in regard to this one.

A. Number 200321, dated February 4, 1893, to the order of Edward H. Gaynor for the sum of $20,274.07 by O. M. Carter, Captain Corps of Engineers, and paid through the Fourth National Bank February 9, 1893.

Q. Please give the same information in regard to this one.

A. Number 224374, dated March 6, 1893, to the order of Edward H. Gaynor for the sum of $16,433.14 by O. M. Carter, Captain Corps of Engineers, and paid through the Fourth National Bank March 10, 1893.

Q. Please give the same information in regard to this one.

A. Number 224387, dated April 3, 1893, to the order of Edward H. Gaynor for the sum of $7,000.00 by O. M. Carter, Captain Corps of Engineers, and paid to the Importers and Traders National Bank April 11, 1893.

Q. Please give the same information in regard to this one.

A. Number 224388, dated April 3, 1893, to the order of Edward H. Gaynor for the sum of $7,218.86 by O. M. Carter, Captain Corps of Engineers and paid through the Fourth National Bank City of New York on April 11, 1893.

Q. Please give the same information in regard to this one.

A. Number 224404, dated May 2, 1893, to the order of Edward H. Gaynor for the sum of $20,436.06 by O. M. Carter, Captain Corps of Engineers, paid to the Fourth National
73 Bank City of New York, May 8, 1893.

Q. Please give the same information with regard to this one.

A. Number 224414, dated May 22, 1893, to the order of Edward H. Gaynor for the sum of $8,404.53 by O. M. Carter, Captain Corps of Engineers, paid in cash over the counter on June 5, 1893.

Q. Please give the same information in regard to this one.

A. Number 224415, dated May 25, 1893, to the order of Edward H. Gaynor, for the sum of $26,706.46 by O. M. Carter, Captain Corps of Engineers, and paid in cash over the counter on June 5, 1893.

Q. Please give the same information in regard to this check, Mr. Jordan.

A. Number 269484, dated July 1, 1895, to the order of W. T. Gaynor for the sum of $4,831.78 by O. M. Carter, Captain Corps of Engineers, and paid to the American Exchange National Bank on July 6, 1895.

Q. Please give the same information in regard to this one.

A. Number 269485, dated July 1, 1895, to the order of W. T. Gaynor for the sum of $6,630.89 by O. M. Carter, Captain Corps of Engineers, and paid the American Exchange National Bank July 6, 1895.

Q. Please give the same information in regard to this one.

A. Number 269486, dated July 1st, 1895, to the order of W. T. Gaynor, $13,490.08, drawn by O. M. Carter, Captain Corps of Engineers. Paid to the American Exchange National Bank July 6, 1895.

Q. Please give the same information in regard to this one.

A. Number 270536, dated July 6, 1897, to the order of the Atlantic Contracting Company for the sum of $230,749.90, drawn by O. M. Carter, Captain Corps of Engineers, and paid to the Manhattan Company—The Manhattan Banking Com pany it is.

Q. Can you give the month?

A. Oh, yes.

Q. Can you find out from the endorsement in any way?

A. The date of payment has been written across, I think it is the 6, because they were paid at the same time. They were both paid at the same time, that and a succeeding check were both paid at the same time.

74 Q. Retain that please until I hand you the next check. Please give the same information in regard to this check.

By the President: What is the date of that first check?

The Judge-Advocate: July 6.

Witness: July 6, they both were paid on July 7, I will read it. Number 270537, July 6, 1897, to the order of the Atlantic Contracting Company for the sum of $345,000.00, and paid to the Manhattan Company on July 7, 1897.

Q. And that then was the date of payment of both checks?

A. Of both checks.

Q. Number 270536, and number 270537?

A. Correct.

Q. Please give the same information in regard to that check, Mr. Jordan.

A. It is Numbered 270431, dated December 16, 1896, to the order of The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $666.00, by O. M. Carter, Captain Corps of Engineers, and paid to the National Park Bank January 22, 1897.

Q. Please give the same information in regard to this check.

A. Number 270439, dated January 12, 1897, to the order of The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for the sum of $353.70 by O. M. Carter, Captain Corps of Engineers and paid to the National Park Bank January 25, 1897.

Q. Please give the same information in regard to that check.

A. Number 270492, dated March 10, 1897, for the sum of $384.00, to the order of the Atlantic Contracting Company, by O. M. Carter, Captain Corps of Engineers, and paid to the National Park Bank, March 30, 1897.

Q. Please give the same information in regard to this one.

A. Number 269471, dated June 4, 1895, to the order of W. T. Gaynor, for the sum of $15,000.00, by O. M. Carter, Captain Corps of Engineers, paid to the National Park Bank on July 19, 1895.

Q. Please give the same information in regard to this one.

A. Number 269399, dated January 11, 1895, to the or-
75 der of Anson M. for the sum of $9,845.35 by O. M. Carter, Captain Corps of Engineers, and paid to the National Park Bank January 28, 1895.

Q. Please give the same information in regard to this one.

A. Number 269419, dated February 1, 1895 to the order of Anson M. Bangs, for the sum of $7,500.00, by O. M. Carter, Captain Corps of Engineers, and paid to the National Park Bank on February 5, 1895.

Q. Please give the same information in regard to that one.

A. Number 269420, dated February 1, 1895, to the order of Anson M. Bangs, for the sum of $10,300.50, by O. M. Carter, Captain Corps of Engineers, paid to the National Park Bank on February 23, 1895.

Q. Please give the same information in regard to this one.

A. Number 269424, dated March 2, 1895, to the order of Anson M. Bangs, for the sum of $21,287.65, paid to the American Exchange National Bank on March 6, 1895.

Q. Please give the same information in regard to this one.

A. Number 269,454, dated May 4, 1895, to the order of Anson M. Bangs for the sum of $1,000.00 and paid to the Fourth National Bank August 5, 1895.

Q. Please give the same information in regard to this one.

A. Number 269455, dated May 4, 1895, to the order of Anson M. Bangs, for the sum of $7,500.00 by O. M. Carter, Captain Corps of Engineers, paid the American Exchange National Bank on May 23, 1895.

Q. Please give the same information in regard to this one.

A. 269456, dated May 4, 1895, to the order of Anson M. Bangs, for the sum of $23,559.92, by O. M. Carter, Captain Corps of Engineers, and paid to the National Park Bank on May 18, 1895.

Q. Please give the same information in regard to this one.

A. Number 269296, dated December 5, 1894, to the order of Anson M. Bangs, for the sum of $87,473.00 by O. M. Carter, Captain Corps of Engineers, paid the American Exchange National Bank December 21, 1894.

Q. Please give the same information in regard to this one.

A. Number 224386, dated April 3, 1893, to the order The
Atlantic Contracting Company, John F. Gaynor, Presi-
76 dent, for the sum of $3493.72, by O. M. Carter, Capt. Corps of Engineers, and paid in cash over the counter April 14, 1893.

Q. Please give the same information in regard to this one.

A. No. 224650, dated Jan. 5, 1894, to the order of The Atlantic Contracting Company, Edw. H. Gaynor, Treasurer, for the sum of $1,982.00 by O. M. Carter, Capt. Corps of Engrs., paid to the National Park Bank, Jan. 9, 1894.

Q. Please give the same information in regard to this one.

A. No. 269437, dated April 5, 1895, to the order of Anson M. Bangs, for the sum of $29,659.82, by O. M. Carter, Capt. Corps of Engrs. and paid through the New York Clearing House, to the American Exchange National Bank, April 9, 1895.

Q. I notice, Mr. Jordan in those checks which I have passed to you, for identification, and which you have identified, is stamped, printed, "Engineers" in one corner of them,—does each disbursing officer have a different character given to their checks?

A. Yes, sir.

Q. Mr. Jordan, can you furnish us copies of those checks?

A. With pleasure.

Q. With the indorsements?

A. With pleasure.

Q. Judge-Advocate: I desire to have it understood by counsel, clearly and frankly that there have been indorsements on most of these checks which the Assistant Treasurer has not mentioned, but if he sends a certified copy, and this, of course, will be done, there will be no objection to their being used, provided they are correct. Counsel so understand it?

Mr. Blair: There will be no admission on our part as to other signatures on checks.

Mr. Rose: He ought to identify the signatures in the indorsements.

Judge-Advocate: Counsel will understand that these 77 are not offered in evidence now.

Mr. Blair: We wont make any point about that.

Judge-Advocate: You will admit the genuineness of the signatures, whatever he testifies to?

Mr. Rose: Whatever he says about it.

Judge-Advocate: That will save the recalling of this witness and perhaps, others.

Q. Mr. Jordan, will you please furnish me, after you return to New York, with copies of all of these checks?

A. Immediately.

Q. What is the form of certificate you use?

A. We certify a true copy and if it is necessary, we have

a notary in the bank—in the office, who will certify to the fact and attach a notarial certificate as to the correctness.

Mr. Blair: There is no necessity of a certificate of the notary.

Witness: Thank you.

Mr. Rose: The certificate of Mr. Jordan over his signature is enough.

Judge-Advocate: I will again ask of the counsel a slight concession; they seem to be in a conceding mood this morning, there are two or three other checks which I may possibly require, I would like to avoid the necessity of having to recall the Assistant Treasurer, and have him send us copies of those.

Mr. Mackall: We may want to see the originals, he might send the originals and we could send them back.

Judge-Advocate: That interferes with the rule of the sub-treasury, these are sacred papers.

Mr. Mackall: That would be the only possible objection.

Mr. Rose: You can send the copies and then if we want to see the originals after he has sent the copy, you can send them afterwards. You can send the copies and if it is necessary, you can get the originals for us.

Judge-Advocate: I am not sure that it would be necessary.

Mr. Mackall: We will let him send the copies, and, I
78 suppose, if it is necessary that you can get the originals for us.

Mr. Rose: We probably would not object.

Cross Examination.

Questions by Mr. Rose:

Q. Mr. Jordan, you have spoken here several times with reference to the majority of those checks that were paid to a bank, paid to or through the Clearing House by payments, you mean from the assistant treasurer of New York?

A. From the cash of the assistant treasurer.

Q. To that bank?

A. To that bank.

Q. Through the Clearing House?

A. Through the Clearing House.

Q. Will you be kind enough to explain to the Court how payments are made when made through the Clearing House?

A. The checks are gathered up generally the night before or on the morn of the day they are transmitted to us through the Clearing House in a package marked with our name; that

package of each individual bank is receipted for by us over at the Clearing House and is returned to us at the office. The checks are sorted and the payment is made in a lump sum. We are ordinarily, in ninety-nine cases out of one hundred, debited at the Clearing House; that is, we owe money at the Clearing House. In this case the money is made up and paid in a lump sum to the manager of the Clearing House, and about one o'clock or half past one o'clock, we return the checks that we decline to pay, for any reason.

Q. In other words, the checks of all the banks that are members of the Clearing House, that are drawn on the assistant treasurer, are put in one bundle, and turned over to you by the Clearing House manager?

A. Those of each bank are sent in a separate package to me, which comes through the Clearing House and is receipted for by my agent to the Clearing House and brought to the office.

Q. Then the checks which you have drawn on various banks are also sent to the Clearing House?

A. As an off-set.

Q. And the difference between the aggregate of the checks held by you and the checks drawn by you is settled through the Clearing House—the manager of the Clearing House?

A. Paid in cash.

Q. And he divides up the money—the different bank balance due each bank?

A. Correct.

Q. In other words, by that method a bank which has a
79 check deposited with it, that is drawn on you gets credit for the amount of that check by off-set or in cash?

A. In cash.

Q. Not always in cash?

A. So far as we have checks against them or those sent in separate packages back to the Clearing House by us.

Q. As a result of this method the Bank gets credit for the amount of that check?

A. Correct.

Q. You have spoken of several checks as having been paid in cash over the counter. Will you be kind enough to look at this check, number 224451 for $5,000.00, this is one of the checks which you identified as having been paid over the counter?

A. Yes, sir.

Q. Those are pencil marks; there is a "C"?

A. That means over the counter.

Q. There are some other other pencil marks there ?

A. In this particular case there is one that has a memorandum as to the check being mis-stamped by the Teller, that is one of our Tellers at the counter.

Q. From whom did that check come, when it came to the Clearing House?

A. John Kelly & Company, Bankers in New York.

Q. Can you tell from that endorsement the individual to whom the money was paid over the counter?

A. To his runner.

Q. To the runner of John Kelley?

A. To the runner of his office.

Q. You dont know his name?

A. I do not.

Q. I show you a paper that you have identified as number 269259 for $100,000.00 and as to which you have testified it was paid over the counter. That also bears a pencil memorandum "OC"?

A. True.

80 Q. Does it not?

A. Yes, sir.

Q. Just above that is the name of the individual?

A. Yes, sir.

Q. Who is the Assistant-Cashier of the Southern National Bank?

A. Yes, sir.

Q. Can you tell to whom the money of that check was paid over the counter?

A. I can most certainly swear that it was a person purporting to be John F. Gaynor, President of the Atlantic Contracting Company, identified by A. C. Carr, or his assistant, accompanying the runner of that Bank and that payment was made to him in person.

Q. That is what you always require?

A. That is a mark of identification and we would not have paid that check without its being so identified.

Q. By the runner of the Bank?

A. By the runner of the Bank.

Q. And the signature of the Bank officer?

A. And the signature of the Bank officer.

Q. And that is true, Mr. Jordan, with reference to all checks where you have stated they were paid over the counter?

A. Every one so marked, that is the method pursued with each one.

Q. Before the Treasurer would pay out money the man who presents a check must be identified by some Bank officer accompanied by a messenger from the Bank?

A. Or some person known to the Teller to be connected with that Bank—it may not be a runner it may be some one else.

Judge-Advocate: Your paying Tellers make payment to persons like myself, or to persons well known, or whose autograph is well known again and again; a man who is perfectly well known would be paid direct upon presentation of a check made payable to his order and endorsed by him, they knowing his signature and knowing him personally?

A. Perfectly correct.

81 By the President: Has any member of the Court any question? There seems to be none.

The Court then, at 12.40 o'clock, P. M., took a recess until 12.5 P. M., at which hour the members of the Court, the Judge-Advocate, the accused, his counsel, and the reporter, resumed their seats.

JOHN B. McCARTHY, a witness for the prosecution, was duly sworn and testified as follows:—

Direct Examination.

Questions by the Judge-Advocate.

Q. Please state your name?

A. John B. McCarthy.

Q. What is your official position under the Government?

A. I am a clerk in the Mail and Record Division, Chief Engineers office, War Department, Washington.

Judge-Advocate: I will state to the court this is another witness where I will pursue the same method as with the Assistant-Treasurer, and let him get away and identify certain papers which are not offered in evidence, but which may be submitted hereafter to the Court.

By the President: No objection.

Q. In the performance of your official duty you have charge of certain records of the Department of Engineers Office of the War Department?

A. I have, sir.

Q. You brought with you certain records from the Engineer Office?

A. I did.

Q. You brought that package with you?

A. I did, sir.

Q. Please state what it contains.

A. Specifications for the improvement of Cumberland Sound, Georgia. Do you want the date?

Q. Yes.

A. August 26, 1892.

Q. If you will give your authority pretty full, Mr. 82 McCarthy, you can save time. When you say contract say contract with whom, give a pretty full description; they are each briefed, are they not?

A. Yes, sir.

Q. Give such description as the brief contains?

A. After the specification are the proposals and abstract of the same. Proposal of Charles C. Ely, William H. Walsh, Edward H. Gaynor, then a contract entered into September 16, 1892 between Captain O. M. Carter, Corps of Engineers, United States Army of the one part and Edward H. Gaynor of Boston, Massachussetts of the other part for constructing jetties at the entrance to Cumberland Sound, Georgia.

Q. That is all the contents of that envelope?

A. Yes, sir.

Q by President. That, I understand, is the original that is filed in the Engineers office?

Judge-Advocate: Yes, he brought that from the Engineers office with him, one of the originals.

Q. Those papers usually are in triplicate?

A. Quintuplicate.

Q. Quintuplicate, this envelope is marked "Cumberland Sound Number 1, Proposals, &c., $5,436, Contract 4820, Edward H. Gaynor, September 16, 1892".

I hand you envelope marked number 2, Mr. McCarthy, please describe the contents of that?

A. This contains the Proposals for improving Savannah Harbor, Georgia, September 17, 1892, and the proposals are those of the National Dredging Company, the American Dredging Company, P. Sanford Ross, W. F. McCauley and the Atlantic Contracting Company, there is wth them articles of agreement entered into October 22, 1892 between Captain O. M. Carter, Corps of Engineers, United States Army of the one part and the Atlantic Contracting Company of the

other part for constructing training wall, jetties and spur dams in Savannah Harbor, Georgia.

83 Q. Those are original papers pertaining to that contract?

A. Original papers from the records of the office.

Q. Those are contained in envelope number 2, endorsed "Savannah Harbor Proposals, &c., 53—

Witness: 5380.

Judge-Advocate: 5380, contract number 4960, Atlantic Contracting Company, October 22, 1897.

Q. I hand you envelope marked number 3, please state what are its contents.

A. This contains an abstract of the proposals open for the improving of Jekyl Creek, Georgia and the Inside Route between Savannah, Georgia and Fernandina, Florida, February 7, 1893, and the proposal of the Atlantic Contracting Company and Collin McK. Grant and the Contract Articles of Agreement entered into March 1, 1893 between Captain O. M. Carter, Captain Corps of Engineers, United States Army of the one part and the Atlantic Contracting Company of New York of the other part for constructing the training wall in Jekyl Creek, Georgia and the Inside Water Route between Savannah and Fernandina, the contract being numbered 5253.

By the President: One of the five originals?

Judge-Advocate: Certainly.

Witness: One of the five originals.

Q. This is number 3, this envelope, Jekyl Creek proposals and so forth 1236, contract number 5283, the Atlantic Contracting Company March 1, 1893.

I hand you envelope number 4, please state the character of its contents and describe them.

A. This contains an abstract of bids for constructing jetties at the entrance to Cumberland Sound, Georgia September 29, 1894, with the proposals of Anson M. Bangs, R. G. Ross and Company, Rittenhouse Moore and the contract Articles of Agreement entered into November 15, 1894 between O. M. Carter, Captain Corps of Engineers, United States Army of the one part and Anson M. Bangs, Fayetteville, New York of the other part, for constructing jetties at

84 the entrance to Cumberland Sound, Georgia, the contract being numbered 5811.

Q. Those are the original papers?

A. The original papers.

Judge-Advocate: That envelope is marked number 4, Cumberland Sound, contract 2440, November 15, 1894.

Q. I hand you now envelope marked number 5, please give the character of its contents.

A. It contains an abstract of the bids for improving the Altamaha River, Darien Harbor and Jekyl Creek, Georgia and the Inside Water Route between Savannah, Georgia and Fernandina, Florida, April 6, 1895, and proposals of Cordez and Bokeman, William T. Gaynor, Charles C. Ely and the contract Articles of Agreement entered into April 20, 1895 between Captain O. M. Carter, Captain Corps of Engineers, United States Army of the one part and William T. Gaynor, Fayetteville, N. Y. of the other part for constructing and repairing training walls and spur dams in the Altamaha River, Darien Harbor and Jekyl Creek, Georgia, the contract being numbered 6049.

Q. Those are all original papers?

A. All original papers and the records of the office.

Judge-Advocate: This envelope is endorsed number 5, Altamaha River and Darien Harbor Proposals number 10,-619, contract 6049.

Q. Is that a little ink lost from the 4?

A. It is 6049.

Judge-Advocate: William T. Gaynor, April 20, 1895.

Q. I hand you now envelope numbered 6, please describe the contents.

A. This contains an abstract of the bids for improving the harbor at Savannah, Georgia, dated September 8, 1896, with the proposals of Virginia Dredging Company, P. Sanford Ross, the Savannah Dredging Company, the American Dredging Company, the Atlantic Contracting Company, John L. Grine, Rittenhouse R. Moore, with the contract Articles of Agreement entered into October 8, 1896 between Captain O. M. Carter, Corps of Engineers United States Army of the one part and the Atlantic Contracting Company of New
85 York, State of New York of the other part for improving the harbor of Savannah, Georgia, constructing training walls, closing dams or breakwaters, the contract being numbered 6515.

Q. Those are all oroginal papers?

A. Original papers.

Judge-Advocate: This envelope is number 6, and endorsed Savannah Harbor Proposals, and so forth, 170182, number 6515, Atlantic Contracting Company, October 8, 1896.

Q. I hand you envelope number 7, state what its contents are.

A. This encloses the abstracts of bids for improving Cumberland Sound, Georgia and the proposals of the Atlantic Contracting Company, Jacob Friday and Sons, John L. Grine and the contract Articles of Agreement entered into October 8, 1896 between Captain O. M. Carter, Corps of Engineers, United States Army of the one part and the Atlantic Contracting Company of New York City, New York, of the other part for constructing jetties at the entrance to Cumberland Sound, Georgia. Contract being numbered 6517.

Q. And these are all original papers? From the files of the Department?

A. All original papers from the files in the office.

Q. Here is an envelope, number 10, please describe the contents.

A. This is case number 17,456, Office of the Chief of Engineers, it is the correspondence relating to what is known as the Paulding case, there are a number of letters and enclosures and press copies.

Q. How many papers are there in there. I think you will find an endorsement on the other side. You have that reversed. Please describe those papers, Mr. McCarthy.

A. These are papers connected with the case which is based on a communication from G. Paulding.

Q. How many papers are there in that envelope, Mr. McCarthy.

A. About 14 papers, separate papers.

Q. They relate to the case called the Paulding Case?

A. Paulding Case.

86 Q. All original papers?

A. These enclosures of 17,456.

Q. The number of papers you mean. There may be with them letter press copies in addition to that number which you have given.

A. I think my number of 14 will cover everything there is.

Judge-Advocate: Everything there is. The envelope is marked number 10 Paulding Case.

Q. I hand you now envelope number 11, please state what it contains, or the number of papers that it contains.

A. There are number of papers and memoranda relating to the improvement of Cumberland Sound.

Q. How many are there in that, Mr. McCarthy?

A. There are 13 papers, there are 16 papers with the envelope and press copies of letters, I have not opened them, press copies and memoranda.

Q. You count them as one piece?
A. One piece, that would make 16 pieces.
Q. Those are all originals from the War Department?
A. All originals from the files of the office.
Q. This envelope is marked number 11, endorsed Cumberland Sound?
A. And Savannah Harbor.
Judge-Advocate: And Savannah Harbor.
Judge-Advocate: That is all, Gentlemen, are there some questions you wish to ask the witness?
Mr. Rose: No question.
Judge-Advocate: Has the court any question they will like to ask this witness?
By the President: No questions.
Judge-Advocate: Mr. Presdent, I have nothing further to offer for the day and may as well say here, as at any time in the case, that the court must be well aware of the embarrassment under which I necessarily labor, having been called into this important case without any previous knowledge about it whatever beyond that slight reference to it which
87 was made about it in the Army papers, and until last Saturday night, or until last Friday I should say, in Washington, was the first time I saw the charges, and it was Sunday afternoon before I got hold of any of the papers in relation to the case, and yet I did not feel justified in the further delaying of the trial of the accused officer and I shall necessarily be compelled to ask the indulgence of the court, and of the counsel for the accused from time to time because from the magnitude of the case, and from the large number of papers and documents connected with it it will be utterly impossible for me to present the case in such manner as I would have been glad to have presented it in consecutive form from one specification to the other. I can promise the court my best endeavors to the extent of my powers, both physically and mentally in the case.
The President: Will you be ready to proceed to-morrow morning at 10 o'clock?
Judge-Advocate: Yes, sir, or half past 10 o'clock, I would like to talk to my witnesses.
Mr. Charlton: May it please Your Honor, the defense desires to say it thoroughly appreciates the position of Colonel Barr and will thoroughly co-operate with him in any time he may desire to have.

The President: If there is no objection, court will adjourn until to-morrow morning at half past 10 o'clock.

The Court Then at 1.30 O'clock P. M., Adjourned to Meet at 10.30 O'clock A. M., To-morrow/

THOMAS F. BARR
Col & Asst. Judge Adv. Genl.
Judge Advocate.

United States Court Room,
Savannah, Georgia,
January 14, 1898.

The court met pursuant to adjournment at 10.30 o'clock A. M.,

Present:

All the members of the court and the Judge-Advocate.

The accused, his counsel and the reporter were also present.

88 Judge-Advocate: I propose to offer in evidence this certificate. (Here the paper is handed counsel for the accused)

No Objection.

Judge-Advocate: Mr. President, I offer in evidence certificate of incorporation under the laws of the State of West Virginia, of the Atlantic Contracting Company, as follows: "Certificate of Incorporation, State of West Virginia. I, Wm. A. Olney, Secretary of State of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me, which agreement is in the words and figures following: 'The undersigned agree to become a corporation by the name of the Atlantic Contracting Company, for the purpose of building or constructing breakwaters, jetties, piers, wharves, locks, bridges, tunnels, canals and all works of river, harbor and other internal improvement; for the purpose of operating such works, when necessary, during the progress of their construction; for the purpose of buying, owning, selling, and mortgaging real and personal property necessary for the carrying on of such operations; for the purpose of transacting a general contracting business. The said corporation shall keep its principal office or place of business at the City of New York, in the County of New York, and State of New York; and it is to expire on the thirty-first day of December, in the year, 1931. And for the purpose of forming the said corporation, we have subscribed

the sum of Thirty Thousand Dollars ($30,000) to the capital thereof, and have paid in on said subscription the sum of Three Thousand Dollars ($3,000.) The capital so subscribed is divided into Six Thousand (6,000) shares of the par value of Five Dollars ($5.00) each which are held by the undersigned respectively as follows, that is to say: John F. Gaynor, Fayetteville, New York, $14,965; number of shares, 2,993; Benjamin D. Greene, New York City, New York, $14,960; number of shares, 2,992; William T. Gaynor, Fayetteville, New York, $25; number of shares 5, Robert H. Green, New York City New York, $25.00; number of shares, 5; James E. Chandler, New York City, New York, $25.00; number
89 of shares, 5. Given under our hands at the City of New York, this Nineteenth day of July, 1892. John F. Gaynor, Benj. D. Greene, William T. Gaynor, Robert H. Greene, James E. Chandler.

Wherefore the corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be from this date until the Thirty-First day of December Nineteen Hundred and Thirty-One, a corporation by the name and for the purposes set forth in said agreement.

Given under my hand and the great Seal of the said State, at the City of Charleston, this Twenty-Second day of July, Eighteen Hundred and Ninety-Two. William A. Ohley, Secretary of State."

Mr. Blair: We will admit, if the court please, that the Atlantic Contracting Company is a corporation organized under and pursuant to the laws of the State of West Virginia.

Judge-Advocate: I so understood that counsel would so agree, but I desired to have upon the record the names of the incorporators.

The President: You can read it.

Judge-Advocate: The certificate is properly signed, I need not read that?

Mr. Blair: Oh, no.

Judge-Advocate: I desire to call attention of counsel to teh fact that the present Secretary of State in giving his certificate, by a clerical error makes the certificate given as 1891 in response to a request from the War Department for this certificate, and the Governor's certificate is dated the 30th day of December 1897. I thought the Governor's certificate covered that without returning it for the clerical error.

Counsel for the accused: We will make no point about that.

The President: It will be received.

Judge-Advocate: It will be received and attached to the record and marked "Exhibit 1".

Judge-Advocate: I now offer in evidence, gentlemen, this contract, I understand you have no objection (No Objection).

Judge Advocate: I now offer in evidence the Articles of Agreement between the accused and the Atlantic Contracting Company for constructing jetties at the entrance to Cumberland Sound, Georgia. The contract, which was approved October 20, 1896, by A. MacKenzie, Acting Chief of Engineers, this is one of the existing contracts with the Atlantic Contracting Company.

The President: That is one of the originals?

Judge-Advocate: This is one of the originals, that has been identified yesterday by the clerk of the War Department.

Judge-Advocate: For the purpose of reference, I desire to have this go on the record and I will read as to the details of the work.

The President: It will be received by the court.

Judge-Advocate: Paragraph 36 of the advertisement under the heading "Details of the Work", "Outline of Previous Work". Two jetties have been partially constructed by the United States at the entrance to Cumberland Sound. The north jetty springs from Cumberland Island and extends seaward a distance of about 18,285 feet, measured along the axis of the work. The south jetty springs from a point on Amelia Island, about 5,800 feet East 18 degrees South from the Eastern bastion of Fort Clinch, Florida, and extends seaward a distance of more than 10,000 feet, measured along the axis of the work.

Paragraph 37. Work Contemplated. The River and Harbor Act of June 3, 1896 authorized works as follows: "Improving Cumberland Sound, Georgia: Continuing improvement Five Thousand Dollars: Provided that Contracts may be entered into by the Secretary of War for such material and work as may be necessary to complete the present project, to be paid for as appropriations may from time to time be made by law, not to exceed in the aggregate two million, three hundred and forty five thousand dollars, exclusive of amount herein and heretofore appropriated." Operations under these specifications contemplate the establishment of a channel across the bar 19 feet deep at mean low water. For this purpose it is proposed to extend and raise the existing jetties with brush mattresses loaded with stone. All work

will be commenced and prosecuted at such point or points
91 and in such manner as may be directed by the Engineer Officer in charge.

Paragraph 38. Mattresses. Any of the following designs for mattresses may be used at the option of the Engineer office in charge:

First Design.—This mattress is a raft of round logs, not less than 12 inches in average diameter and not less than (9) Nine inches in diameter at the small end, placed in close contact side by side, and firmly held by transverse pole binders, spiked or bolted to them. The binders will be small logs or poles, not less than Five (5) inches in diameter at the small end and placed not more than Eight (8) feet apart, and those on the outside will be close to the ends of the logs. There will be placed upon the raft of logs a layor of live wood brush sufficient to give Six (6) inches in thickness in the finished work, secured in place by poles, lashed to the binders of the rafts.

Second Design.—This mattress will consist of a layer of closely placed fascines, crossed at right angles by a second layer of like fascines, placed at intervals of Six (6) feet. The brush must be carefully laid so as to break joints and to make a continuous fascine extending completely across the mattress. The fascines must be firmly held between the binding poles made of live saplings of pine, or other timber of a kind approved by the Engineer Officer in charge. These must be straight and of slight taper and must not be more than Five (5) inches in diameter at the butts, nor less than Two (2) inches in diameter at the tips. They must be spliced together with long scarf joints in a manner satisfactory to the Engineer officer in charge and so as to extend completely across the mattress. Either one or two layers of these poles will be used at the top and at the bottom of the mattress, as may prove necessary for holding the mattress until in place and ballasted. The binders in each layer must be placed parallel to each other at intervals of Six (6) feet, and as required by the Engineer officer in charge. The fascines and binders must be firmly compressed and lashed together at intervals of Six (6) feet in a manner satisfactory to the Engineer officer in charge.

92 Third Design.—This mattress will consist of a bottom grillage of poles of live saplings of piles or other timber of a kind approved by the Engineer officer in charge. The poles must be straight, of slight taper, of an average

diameter of from Four (4) to Five (5) inches, and not less than three (3) inches at the small end, and must be placed from Four (4) to Eight (8) feet apart between centers, both longitudinally and transversely, and spliced together with long scarf joints in a manner satisfactory to the Engineer officer in charge. Upon this Grillage will be placed a layer of closely compacted fascines, surmounted by a top grillage similar in design to the one at the bottom, the poles of each grillage will be securely fastened together by suitable wire or rope lashings, and the upper and lower grillage will also be securely fastened together in such manner as the Engineer officer in charge may approve.

In any of the foregoing designs the logs and poles used may be loblolly or other timber of a kind approved by the Engineer officer in charge, and must be sound, of gentle taper, and sufficiently straight. Logs will not be used that do not fit closely enough together to hold all the stone securely, even without the use of brush. No extra allowance will be made for logs that are larger than the sizes called for in these specifications. Towing beckets, buoys, and lines, and range masts must be placed as directed. The United States reserves the right to make such alterations in the details of construction, or in material, as may be deemed best during the progress of the work, providing that should such alterations material vary the cost of the mattress the price to be paid shall be increased or diminished proportionately, such change of price being agreed upon before the alterations in the mattress are made. The size of the mattress will be fixed by the Engineer officer in charge from time to time. In general, they will be from Twenty (20) to One Hundred (100) feet in width, have such lengths as may be convenient for handling, and will be laid in sections of convenient length in juxtaposition, or with such lap as may be
93 required. No mattress will be accepted until properly placed in the work and secured there by a layer of stone of such thickness not exceeding One (1) to Two (2) feet, as may be required by the Engineer officer in charge. Gaps between the edges of adjacent sections of mattress will be filled with stone by the contractor, to be paid for at a price equal to the price of mattress work. Portions of the mattress lying more than Four (4) feet outside of the position assigned will not be accepted or paid for. Separate bids for the designs for mattresses are not desired. One price only should be given in the proposals, and the price so stated will be

understood as referring to any of the designs which may be required by the Engineer officer in charge.

Paragraph 39. Fascines.—All Fascines will be made of live brush of cerar, water oak, myrtle, sweet gum, or any other variety of wood approved by the Engineer officer in charge. The fascines will be from Thirty (30) to One Hundred (100) feet in length, and must be compressed tightly, by an approved form of chocker, to a diameter of Nine (9) inches at intervals of Two (2) feet, where they must be bound firmly with wire ot tarred rope of approved strength, the brush used will be as straight and well trimmed as can be obtained; the fascines shall be carefully and thoroughly made and handled with care. They shall be piled up on shore, or on barges for measurement in such way as the Engineer officer in charge may direct.

Paragraph 40. Stone.—First Class Stone.—This stone must be of good quality and not liable to disintegrate under the action of the weather or of salt water. It must be hard and weigh not less, dry, than One Hundred and Sixty-Five pounds (165) to the cubic foot, blocks must be of suitably random size, varying in weight from one ton to ten tons, but Fifty (50 per cent of the blocks must weigh Five tons (5) tons or over. In shapes the blocks must be angular, the smallest dimention being not less than one third the greatest. Quarry stone is required; no boulders nor rip-rap from boulders will be received.

Second Class Stone.—This stone must be of good quality and not liable to disintegrate under the action of the
94 weather or of salt water. It must be hard and weigh not less, dry, than 155 pounds to the cubic foot. Blocks must be of suitable random sizes, varying in weight from Five Hundred pounds (500) to Five tons (5), but Fifty (50) per cent of the blocks must weigh One (1) ton or over. In shape the blocks must be angular, the smallest dimension being not less than one third the greatest. Quarry stone is required; no boulders not rip-rap from boulders will be received.

Third Class Stone.—This stone must be of good quality and not liable to disintegrate under the action of the weather or salt water. It must be hard and weigh not less, dry, than One Hundred and Fifty (150) pounds to the cubic foot. The blocks must be of suitably random sizes, varying from Twenty-Five (25) to One Thousand (1000) pounds. In shape the blocks must be angular, the smallest dimensions being not less than one third the greatest.

Fourt Class Stone.—This stone must be of good quality and not liable to disintegrate under the action of the weather or of salt water. Its specific gravity must not be less than 2.4 and it must be as hard as hard-burned brick. The blocks must be of suitably random sizes, varying in weight from Fifteen (15) to Two Hundred and Fifty (250) pounds. In shape, the blocks must be as nearly cubical as possible, the smallest dimension being not less than one third the greatest.

The quality, size and shape of all stone must be satisfactory to the Engineer Officer in charge. All stone must be placed in any position of the jetties, or spurs, or on shore between high and low water, as required by the engineer officer in charge. All stone must be placed in any position on the jetties or spurs, or on shore between high and low water, and required by the engineer officer in charge. Such stone when used above mean low water shall, at the option of the said Engineer Officer in charge, be either placed in position by hand or thrown on rip-rap. Stones placed more than Two (2) feet outside of the positions assigned will not be accepted or paid for.

Paragraph 44.—Prices.—The bidder shall state on the form hereto appended (1) a price per square yard for mat-
95 tresses; (2) a price per ton of Two Thousand pounds (2000) avoirdupois for first class stone; (3) a price per ton of 2000 pounds avoirdupois for second class stone; (4) a price per cubic yard for third class stone; (5) a price per cubic yard for fourth class stone; and (6) the plant which he proposes to use in the works.

The prices are for the materials in place in the work and are to cover the cost of all labor, appliances, and contingencies connected with it, excepting only the salaries of the agents of the United States engaged in the supervision and inspection of the work and the measurement of material.

For the purpose of canvassing bids the following will be assumed as the approximate quantities of material, to-wit: Two Hundred Twousand square yards of mattress work; 50,000 tons of first class stone; 75,000 tons of second class stone; 100,000 cubic yards of third class stone, 250,000 cubic yards of fourth-class stone; but the foregoing quantities are liable to be increased or diminished, actually or relatively as may be found necessary.

The said party of the second part shall furnish to the satisfaction of the said party of the first part all steam tugs, barges, derricks, machinery, apparatus and appliances, as well as

such supervision and labor as may be required, for a vigorous prosecution of the work of constructing jetties at entrance to Cumberland Sound, Georgia, observing and fulfilling all the requirements and stipulations of said specifications and if its proposal dated September 7, 1896.

The said party of the first part shall pay to the said party of the second part One Dollar and Ten cents ($1.10) per square yard for mattresses; Five Dollars and Twenty-Five cents (5.25) per ton of 2.000 pounds for first class stone: Five Dollars and Twenty-Five cents ($5.25) per ton of 2,000 pounds for second class stone; Three Dollars and Ninety cents ($3.90) per cubic yard for third class stone; and Three Dollars and Fifty cents ($3.50) per cubic yard for fourth class stone, it being understood and agreed that no parcel or final payment shall be made until the requirements and
96 conditions of all and singular the papers hereunto attached, or herein referred to, and forming a part of this contract, shall have been complied with in and to their full intent and meaning by the said party of the second part.

Judge-Advocate: A copy of this contract will be attached to the record and marked "Exhibit Number 2".

Judge-Advocate: The whole contract in its present shape is offered in evidence.

Judge-Advocate: There is a similar contract, varying somewhat as to the provisions, quantities and payments, this is the October 27, 1896, contract.

Mr. Blair: There is no objection to that.

Judge-Advocate: I offer now in evidence the Articles of Agreement entered into October 8, 1896, between O. M. Carter, the accused, of the one part and the Atlantic Contracting Company of New York City, New York of the other part for improving the harbor of Savannah, Georgia, constructing training walls, closing dams or breakwaters, approved October 27, 1896. This contract is almost like the other varying,—it is like the other, exactly as to the specifications in relation to mattresses and stone also, I understand varying only as to the amounts to be used in the work and the sums to be paid therefore.

The President: It will be received.

Judge-Advocate: It will be before the court for its inspection and consideration from now on and a copy of this contract will be attached to the record and marked "Exhibit Number 3".

Judge-Advocate: I desire to state to the court that with

each of the contracts that have been submitted this morning there are various papers which may be hereafer submitted and which were identified yesterday by the official of the War Department and testified to.

97 CAPTAIN CASSIUS E. GILLETTE, Captain Corps of Engineers, United States Army, a witness for the Prosecution was duly sworn and testified as follows:

Direct Examination.

Question by the Judge-Advocate:

Q. Please state your name and rank?

A. Cassius E. Gillette, Captain of Engineers, United States Army.

Q. What is your station?

A. Savannah, Georgia.

Q. How long have you been on duty in Savannah?

A. Since the 20th of July, 1897.

Q. Whom did you relieve from that duty?

A. Captain O. M. Carter, Corps of Engineers, United States Army.

Q. That is the accused officer here present?

A. Yes, sir.

Q. What are the nature of your dutues?

A. In general, I have charge of the fortifications on the Atlantic coast of Georgia and of the River and Harbor Improvements on the Atlantic coast of Georgia and running into the Atlantic Ocean, except the improvement of Cumberland Sound. Georgia and Florida.

Q. What works were under your supervision at the time you first assumed duty at Savannah?

A. Those mentioned with the addition of the improvements of Cumberland Sound.

Q. When were you relieved from the supervision over Cumberland Sound?

A. On December 6, 1897 the transfer was made. The order for the transfer was December 4, 1897.

Q. And the date of your arrival in Savannah to assume duty was what?

A. July 20, 1897.

Q. What is the name given to the entire territory over which you had supervision at that time?

A. It is generally called the Savannah District.

98 Q. Savannah District, of what character?

A. River and Harbor improvement.

Q. You have a map of these improvements to which you have referred, it is here in the court room, is it not?

A. Yes sir. There is one on that desk, the large map.

Q. Please point out, Captain, the works in process, the work of improvement in process of construction in the district first placed under your charge when you assumed duty here.

A. The work of improvements going on at Savannah Harbor at Cumberland Sound, and there was also dredging partly in Savannah Harbor, and dredging along the inside route near Beaufort.

Q. What is the character of those improvements.

A. The Improvements at Savannah Harbor consisted in building what is known as detached extension to the Oyster Bed training wall or partly a breakwater. Tybee breakwater at the mouth of the Savannah River. The improvement to Cumberland Sound was the building of two jetties extending Eastward from the mouth of the sound, one springing from Cumberland Island in the State of Georgia, which is shown about that point (indicating), the other springing from Amelia Island to Fernandina, on which the town of Fernandina is now located in the State of Florida. The improvement is called the improvement of Cumberland Sound, but the port is Fernandina on Amelia River in Florida.

Q. That is all the description you care to give of the work that was under your supervision?

A. The improvement at Savannah Harbor consisted in building a breakwater or detached extension for a training wall or two training walls. The Oyster Bed training wall and the Cockspur Island training wall. They are two jetties at the mouth of the river. The breakwater is an extension of the one on the left as you go down the stream. It is out at sea for some distance, that is out from the other training wall and is designated to protect shipping in Tybee roads against North-east gales and also to help throw greater quan-

tity of water across the outer bar. It was being improved

99 by sinking mattresses on the sand.—mattresses built of brush and then loaded with rock. It was under contract with the Atlantic Contracting Company. The improvement of Cumberland Sound consisted of building two jetties analogous to the breakwater built at the Savannah Harbor.

Q. Did work under these contracts continue for all the period during which you were in charge of the engineering district?

A. No, sir; work entirely ceased on both of them about the same time, about October 8, 1897.

Q. About October 8?

A. Yes, sir.

Q. Who were the contractors for the Savannah Harbor improvements?

A. The Atlantic Contracting Company, and also, the Atlantic Contracting Company had both contracts.

Q. You will please explain to the Court, Captain, the method pursued in the engineering department to determine the location of work of the character to which you have testified for the improvement ot river and harbors; that is, generally so, so that the Court and myself and perhaps counsel, may be instructed as to the methods pursued?

A. The initial step in an improvement consists in a preliminary examination ordered by Congress. If favorable recommendation is made, then a survey is ordered and a project submitted for approval. This project is usually made like the ones under consideration by a Board of Engineers ordered for the purpose. The project gives the general plan of improvement, whether it is to be jetties or dredging or both or analogous works; sometimes this project is subject to revision, generally by another Board of Engineering Officers. After the project is approved money is appropriated by Congress to carry out the project. When the Chief of Engineers who is in general charge of all the improvements, is notified of an appropriation for River and Harbor improvement; he notifies the individual officer in charge of the particular work, of
100 the amount appropriated and requests a project for its expenditure. That project is supposed to be in carrying out the original general project and usually goes into more details in the execution of that part of the work which it is proposed to do. It also recommends whether the work shall be done by contract. or be done by purchases by the Engineering Officer contracting and the employment of hired labor. If the improvement is to be by contract, authority to advertise for bidders and to print the specifications is obtained. The specifications are printed and distributed and on a certain day, which is usually 30 days from the date of advertising—it is specified in the contract—the bids are opened. If there is no reason for not doing so, the contract is awarded to the lowest

bidder, unless there is some manifest impediment to his doing the work. The Government reserves the right to reject any or all bids. The usual procedure is to award the contract to the lowest bidder, with the approval of the Chief of Engineers. Then a contract is entered into between the Engineering Officer and the bidder, whether the bidder is an individual, a firm or a corporation. The contracts are executed in quintuplicate, four of them, signed. They require the approval of the Chief of Engineers. After that the work is carried out under the supervision of the Engineering Officer in charge and such asistants as he may employ, and payments are made by him to the contractors in accordance with the terms laid down in the specifications.

Q. Have you had any experience heretofore, Captain, in work of a similar character to that which was going on in Cumberland Sound and Savannah Harbor when you reached here?

A. I had charge of a work of improvement at Humboldt Harbor, Cal., which is somewhat analogous. The improvements consists of two parallel jetties running out into the ocean. It is worked on quite a different plan, as the Pacific Ocean in that vicinity is much more rouch and stormy than the Atlantic Ocean, so that the mattresses and rock that are placed in a jetty from a trestle with a railroad track on it is built out from shore. Here the materials are put in 101 from barges. In this vicinity the weather and the sea is smooth a much greater number of days in the year than it is there in that country; so the work can be done from barges. But there it would be practically impossible to do it; but the jetties themselves are upon an analogous plan. That was an improvement, the total cost of which was about one million and three quarters.

Q. You found when you reached here these two existing contracts with the Atlantic Contract Company, did you make yourself familiar with their terms at once?

A. Yes, sir.

Q. At how early a period after your arrival did you make any payment upon the work performed under the contracts?

A. I made one payment on the first of August, 1897—the first or second,—one on the first few days in August, I do not remember it exactly.

Q. Is that the only payment made under them?

A. Yes, sir.

Q. Before the work was suspended?

A. Yes, sir.

Q. When did you first make personal examination of the work being performed under those contracts?

A. On July 30, I inspected the work at Cumberland Sound; I had previously gone to Tybee to make an inspection of the work there in connection with the contract for building the fortifications there. I inspected the fortifications, but found that the breakwater work was entirely under water and a mattress for use in it would not be there for a day or two, as they came from some miles in the opposite direction, miles to the northwest, so I did not inspect a mattress that day. When I went to Cumberland Sound I inspected the office work, examined the site of the jetties; they were mostly under water too. A mattress was being sunk out at sea when I reached the office, which is two or three miles from the point where the work was being done. Another mattress was to have come in that night, from up the St. Mary's River,
102 where they were to be built. They were putting in one regularly every day. I waited for it, but it did not come. I stayed over night, expecting that it would arrive in the night, but it did not get there until some time the following afternoon, then I inspected it.

Q. What was its character?

A. It consisted of a big mass of brush, with leaves and twigs, piled on a barge. The barge had built up on it an arrangement of cross timbers, called "gins", long timbers, about a foot or so in diameter, flattened on two sides, and placed cross-wise with the barge, about two feet apart, the whole length of it. They were balanced in the middle; the middle point being about 5 feet above the deck of the barge, and so arranged with props under one side that they could be knocked out, and when that was done, the preponderance of the mattress, being on that side, would slip off the barge. From the top of the timbers, which are called "gins", to the top of the mattress, I measured in a number of places, and the average thickness of the whole mass was seven and nine tenths feet. I measured it or I had it measured by Marion Twiggs, the Assistant Engineer in charge, and Mr. John M: Hall, the inspector. We measured it by Twiggs getting on top of the mattress, with a sounding pole, a pole used for making soundings out on the bar, where there is from 6 to 12 feet of water, or 20 feet. This pole was pushed down through the brush to the bottom in the—

Q. Through the interior?

A. Yes; right through the body of the mattress, in a symmetrical set of places. Mr. Hall got under the mattress, and when the bottom of the pole was level with the bottom of the structure, he informed Mr. Twiggs and Mr. Twiggs noted the depth.

Q. This measurement was in your presence?

A. It was in my presence, yes, sir.

Q. You heard the announcement?

A. I heard the announcement every time the pole was 103 at the bottom, and I saw myself what the reading of the pole gave at the top. The feet and tenths were marked on the pole. The externals of the mattress on the bottom was a grillage of pine poles, that is, they were pine poles placed about 8 feet apart in one direction and corresponding poles placed about 8 feet apart in the opposite direction at right angles to those. Each pole was continued clear across the mattress by other poles lashed to it with wire, with several feet of lapping. On top of the mattress was a similar arrangement of poles—a similar grillage. Sticking out of the mattress at various places on the ends and sides were the ends of other parallel similar poles, apparently forming parts of similar grillages or half grillages running through the mattress separating it into different layers as I afterwards found out. That was not apparent at first glance.

Q. You could not perceive that this mattress was laid in courses at the first glance. For what reason?

A. It was so brushy; so many leaves and twigs sticking out of it in all directions.

Q. Do you know what the component part of each course of mattress consisted, or how many were used in the construction of each mattres

A. There were 8 courses in this mattress, as I found on further examination, being informed of that fact by the assistant Engineer, separated by these poles running through it, and the apparent construction would indicate that each layer of brush was put down in bundles, and very loose bundles, and then a grillage or a half grillage. That is, poles running in opposite direction at right angles, or a single layer running one way of the mattress, and another layer of brush and another layer of poles, and so on to the top. I could not see for myself, that that was the case, but I believe that each layer of poles was wired to the bottom layer by iron wires. There was some evidence that the brush was in bundles. It took a very close examination to see that it was. Here and

there a string, a single strand of what is called spun yarn,
104 it looks like half a string ot tarred rope without much tar on it. It usually has a little tar.

Q. That has a technical meaning, "spun yarn"?

A. Yes, a single strand of spun yarn. It is probably as strong, but not twice as strong as a single string of good grocers twine.

Q. Could it be used to successfully choke a bundle of that character?

A. It would hold a bundle of brush in good shape for handling, it could not be bound very tightly with it, with any expectation of permanency.

Q. Does that quite answer my question, has "choking" a technical meaning in the profession?

A. Yes, sir.

Q. Was that spun yarn of sufficient strength to enable sufficient choking to be done to the bundle?

A. No, sir. A fascine to be choked as that is the term I understand you want, would have to be compressed, if it were fastened according to these specifications, very much more tightly and have a much greater strain in the binder than a single strand of spun yarn would stand.

Q. My unfamiliarity with the subject, of course, leads me to ask questions which would not have a direct bearing, and I may not understand choking, I would like to have you explain, so I can understand it, and perhaps, some members of the Court do not understand what is choking for, that rope yarn is used for any purposes in the construction of a fascine.

A. Do you mean fascines as specified in these specifications.

Q. Any fascines, yes, the fascines as specified in these specifications.

A. A fascine, the word fascine, means cylindrical bundle of rods or small sticks tightly bound at short intervals, these specifications for Cumberland Sound required that the fascines shall be tightly choked at intervals of two feet to a
diameter of 9 inches, where they are to bound with wire
105 or tarred rope of approved strength—can I have a copy of those, I may not get those exactly right—(Copy of specifications is here handed the witness) The fascines will be from 30 to 100 feet in length and must be compressed tightly by an approved form of choker to a diameter of 9 inches at intervals of two feet where they must be bound

firmly with wire or tarred rope or approved strength." I do not know, of course, what kind of a choker was used to bind these bundles.

Q. Then a choker would be used before they were tied with the rope yarn?

A. That's the idea, yes, sir.

Q. That is the point that I wished to get, that is the information that I wanted for myself, and probably some member of the court.

A. Fascines are usually made by an arrangement of cross stakes driven into the ground two feet apart or thereabouts, forming a continuous saw horse. The brush is trimmed so that single limbs are placed into the top angle of these stakes and a rope placed around at intervals of two feet. The rope being fastened and is thirty feet long, which is just long enough to go around the bundle each end of that rope is fastened into a hand spike about a foot from the end, then with a man on each end of the hand spike they bear down so that the rope is drawn, the circle of rope, is drawn tight and the circle made smaller and smaller, and then before removing the choker, as this hand spike and rope is called, the binder is put around there usually of wire, that is what is meant by choking.

Q. Does that require intelligent labor, Captain?

A. Any ordinary laborer could be trained to do it, there was no indication in the mattress I saw that anything like that kind of work had been done.

Q. You, of course, only saw the top mattress, the upper course?

A. I only saw the top course, yes sir. I could know what was in the second course because I tried to walk across the mattress and could not do it, except by walking on one 106 of the poles of the top grillage. The brush was so loose and so fine, so little of it, that in trying to walk across, if you stepped off a pole, I went in several times, nearly to my waist into the brush.

Q. The surface then, would not retain the weight of a man?

A. No, sir.

Q. Not being sufficiently compressed?

A. No, sir.

Q. How many square yards were there in those courses of this mattress on the scow, of which you have testified?

A. The mattress was in two divisions; the lower four

courses were about 100 feet by 50 feet. The upper four courses were about 80 feet, as I remember, it by 50 feet—it was smaller. I did not figure it out myself, but the assistant engineer made it something over 3,000 square yards. The price was a dollar and ten cents per square yard, that is, counting each of those layers as a separate mattress, making the total cost of the mattress about $3,668.00, as I remember it.

Q. Did that mattress in regard to which you have testified, meet the requirements of the specifications contained in the contract with the Atlantic Contracting Company?

A. It did not.

* * * * *

120 Q. Was it a mattress of as much value as a mattress of the lowest type named in the specifications, or of as much intrinsic value? or of as great cost in construction?

A. I do not know what is mean by "lowest type in the specification", there are three types.

Q. I mean the third type?

A. The third type. It was not so valuable as the same number of square yards of the third type. In my opinion, the 8 courses, or 8 mattresses, were about as valuable, perhaps a little more valuable, than one mattress built according to the third design and not so valuable as two. In my opinion, based upon my experience as an engineer, and investigation of the facts connected with the construction of this mattress, its cost per square yard was about one sixth of the cost per square yard of a mattress built according to the third design and somewhere about one tenth of the price paid in the contract per square yard for mattresses.

Q. By that, you mean the cost of production?

A. Yes, sir.

Q. Of one of those mattresses?

121 A. Yes, sir. The cost per square yard of this mattress that I inspected in the works, I believe to be between 10 and 15 cents per square yard.

Q. Was that sunk or taken to the place for sinking?

A. It was.

By the President: What was that question?

Judge-Advocate: If it was taken to where it was to be sunk.

Q. That was its cost of manufacture and assembling different bundles of brush, placing it on the scow and taking it to the place on the works and sinking it?

A. Yes, sir.

Q. As to this particular mattress to which you refer, was that ever sunk in the works?

A. Yes, sir.

Q. To your knowledge?

A. I was present when it was sunk.

Q. That is the only mattress that you have ever seen that was used in that work?

A. No, sir; I have seen two others.

Q. At what time?

A. A few days after this one was sunk, I inspected another one built, I believe, within two days after this first one. I also at the same time inspected an experimental mattress, which I had ordered built, or rather four mattresses built according to the third design of the specifications and piled up on top of one another on a barge similar to the others. The first of these mattresses being one built by the contractor without any instructions from me, was similar to the first one I inspected, in that it was in the same shape. It was evidently built of the same kind of bundles, but they had been placed in layers much more closely together, the others had apparently been thrown down adjacent to each other, but in this next one, the bundles had been apparently forced together, so there was unquestionably between one
122 third or one half more brush in it and I could walk across it without walking a pole. The next mattress I inspected was built, each of the four mattresses of which it was composed, was built under the supervision of the Assistant-Engineer and the Inspector, under orders from me to build such a mattress, or four such mattresses of the third design of the specification. To the best of my memory, I gave them absolutely no further instructions. In conversation with them, there may have been points in the third design mentioned. I do not remember that. My instructions to them were to built four mattresses on top of each other, according to the specification. Then these two mattresses, the second one built by the contractors in the continuance of his system of construction and the one I had ordered built, I compared roughly in order to get the relative amounts of material in the two, per square yard. I directed the Assistant-Engineer to have them sunk in the works and to weigh them. This weighing was done by measuring the displacement of each barge on which they were located just before the mattress was

slipped off into the water, the amount that the barge was forced down into the water by its own weight and the weight of the mattress was carefully measured. As soon as the mattress was off, a similar measurement was then taken, which gave the number of cubic feet of water displaced by these mattresses.

Q. You were present at this time, were you?

A. I was not present during the weighing of the mattresses; that was done under my instructions.

Q. Whom did you instruct to measure it?

A. I instructed Mr. Marion Twiggs, the Assistant Engineer.

Q. And who else?

A. He was the only one I instructed; he submitted a report subsequently of this measurement.

Q. In your testimony, Captain, just please confine yourself to your actual knowledge; when any instance of this kind comes up, you can tell when anything was done by your direction, by whom it was done, and then we can call them.

123 Mr. Blair: That being hear-say, should be stricken out.

Judge-Advocate: That is to be established by other witnesses, if it can be done.

The Witness: This method that I have explained was the method that I ordered done.

Q. These were single courses of mattresses that you have made in this way?

A. I made four mattresses, each a single course mattress, according to the third design of the specifications, piled on the top of one another. There was one modification of the specifications which was not put in. The specifications prescribed that the poles of the grillage, holding the fascines in place, shall be fastened together with long scarfed joints, which means that the end of each pole shall be cut to a long taper fit to the similar taper on the end of the opposite pole and then wired together. Such a scarf joint is left to the discretion of the engineer in such a manner as he prescribed, but it is utterly unnecessary in that mattress, as they were simply wired together. With that trifling distinction, the mattresses were to have been built strictly according to the third design of the specifications.

Q. And you saw then, these four mattresses built according to the third design of the specifications, and four mattresses, such as were offered by the contractor?

A. The one offered by the contractor contained eight courses.

Q. 8 courses of this mattress; that is the point I wish to elucidate.

A. Yes, sir; they were not 8 separate mattresses, because if the 8 were taken off the barge separately, a number of them, three of them, would have to fall to pieces from having no grillage.

Q. Please explain what is a grillage?

A. A grillage as usually used in Engineering, is a row of timbers parallel to each other, crossed by a similar row at right angles to those. The term is sometimes used as applying to the single row, but as I use it here, it applies to the double row. A single row would be a half grillage.

124 Q. In order to constitute a matress there should be a top grillage and a bottom grillage.

A. Yes, sir. A complete top grillage and a complete bottom grillage.

Q. What is that photograph, Captain? (Handing witness a photograph.)

A. That is a photograph of the first mattress that I inspected at Cumberland Sound.

Q. The mattress in regard to which you have given testimony?

A. Yes sir.

Q. Was that taken by your direction?

A. It was.

Q. In your presence?

A. It was not.

Q. By whom was it taken?

A. By John M. Hall, the Inspector.

Q. You recognize it as a good photograph of the mattress you saw?

A. A fair photograph, it is rather small, but it is a photograph of the mattress, I recognize the mattress.

Q. It has characteristic features which enable you to recognize it?

A. Yes sir.

Q. And you testify that that is a photograph of that mattress?

A. Yes sir.

Here photograph is handed to counsel for the accused and they say they have no objection.)

Judge Advocate. I offer this photograph in evidence to be attached to the record and to be designated as "Exhibit No. 4."

Q. What photograph is that which you now have?

A. That is a photograph of the same mattress as it was sliding off the barge.

125 out at sea, while it was being put in the jetty.

Q. Were you present when that was taken?

A. I was.

Q. You saw it taken?

A. Yes, sir.

Q. And that is a photograph of that mattress?

A. It is a photograph, but a poor one. The camera was on a barge alongside and the motion of the sea moving the camera and the motion of the mattress itself, has magnified the brush so that each twig looks about twice its proper diameter; the poles being magnified by the diameter of the twigs look their natural size (Here the photograph is offered in evidence by the Judge Advocate to be attached to the record and marked "Exhibit 5).

Q. What is that photograph which you have in your hand, Captain?

A. That is a photograph brought me by one of my inspectors in response to an order to have a photograph taken of a mattress of the third design, built by my orders for the improvement of Savannah Harbor. The third design there is precisely the same as the third design in the specification for cumberland Sound.

Here the photograph is offered in evidence by the Judge-Advocate to be attached to the record and marked "Exhibit No. 6".

Q. Did you examine the rock in use in the fulfillment of these contracts when you assumed duty?

A. I examined the rock in use at Cumberland Sound.

Q. Did you find it was the same character of rock required by the contract?

A. The barge loads of rock used to sink these mattresses consisted of two or three kinds. The bulk of it was a light coarse limestone. At that time I was not familiar enough with the specifications for rock, to notice whether or not it filled them or not. The specifications being for specific gravity. Subsequently it was reported to me by my Assistant-Engineer that the rock at Savannah Harbor—

126 Q. Never mind what was reported to you, only testify to that which at any time came to your own knowledge personally.

A. I have never tested the rock.

Q. Then you have no knowledge as to the character of the rock that was being used?

A. No, sir.

Q. Did you at any time object to the rock, the character of the rock that was being used?

A. I did.

Q. At what date, do you remember?

A. Early in August, I do not remember the exact date. The objection at Savannah Harbor was before the objection at Cumberland Sound.

Q. Who passes upon these questions originally, of the character of the material used?

A. Of any particular barge load of material?

Q. Of any material that enters into the construction of these public work under a contract?

A. The Inspector.

Q. He is a sworn officer of the Government?

A. No, sir.

Q. He is not under oath?

A. No, sir.

Q. Not a sworn officer?

A. No, sir.

Q. Appointed?

A. Yes, sir.

Q. He is the agent of the Engineer?

A. He is an employee hired by the month.

Q. You mean when employed by him, but he is really an agent of the Government?

A. Yes, sir.

Q. He is paid by the Government?

127 A. Paid by the Government.

Q. These inspectors are kept at different points on the work?

A. Yes, sir.

Q. Are they usually required to inspect all materials entering into the construction of matters used under the contract?

A. Yes, sir.

Q. And to whom do they make their reports?

A. Either directly to the officer in charge of the district, or

to the Assistant-Engineer in local charge of the particular work.

Q. That is when the districts is sub-divided?

A. Yes, sir.

Q. When there are sub-districts?

A. Yes, sir.

Q. Are there sub-districts in this district?

A. Not definite sub-districts; the reports of the inspectors went through the Assistant-Engineer's to the Engineering officer in charge.

Q. Was the assistant engineer an officer of the Engineer Corps?

A. No, sir.

Q. A civilian engineer?

A. A civilian engineer.

Q. What is the purpose for which the mattresses are used in works of this kind?

A. On a sandy bottom, subject to the action of storms and tides, a jetty built of stone alone is liable to sink gradually into the sand from the fact that it does not act as a whole. The mattress designed to spread an apron or cover over a large mass of sand so that the effects of wave action cannot extend clear across the mattress; a little wave action at one point will not affect the whole jetty.

Q. Do you know what those bundles are there on that platform?

A. They are a part of a number of bundles of brush brought into my office by my inspectors, one inspector and one clerk at my orders.

128 Q. All you know of them then is that they were brought there, and what you have learned since they were brought there?

A. Yes, sir.

Q. What would you call one of those bundles?

A. I would call it a bundle of brush.

Q. Could bundles of that character be properly termed fascines?

A. Not without a great deal of specification. If an officer wanted to construct a work of bundles of brush of that kind and describe them, he might, without doing violence to the English language, possibly call them fascines; he would probably call them bundles.

Q. I understood you to say that they could not be called fascines, under the language used in these specifications?

A. Most emphatically not; they could not.

Q. Was the mattress to which you testified, of which the photograph is now in the hands of the Court, constructed of bundles of that character?

A. Apparently bundles somewhat similar in character to the lower ones; it was finer brush; I saw no poles or stakes anything like as large as those in the upper part of the pile. It was of very fine material. Otherwise, the system of construction was apparently about the same as those.

Judge Advocate: Mr. President, I should like to adjourn until tomorrow morning.

* * * * *

129 The President: If there are no objections the court will stand adjourned until to-morrow morning at 11 o'clock.

Here the court at 2.25 o'clock P. M., adjourned until to-morrow morning at 11 o'clock A. M.

THOMAS F. BARR,
Col. & Asst. Judge Adv. Genl., Judge Advocate.

130

United States Court Room,
Savannah, Georgia.
January 15, 1898.

Court met pursuant to adjournment at 11 o'clock January 15, 1898.

Present: All the members of the Court and the Judge-Advocate.

The accused, his counsel and the reporter were also present.

Judge-Advocate: To facilitate the business of the Court, and in order that we may keep the record of the proceedings up to date in the future, and by authority vested in me I introduce as reporter, Mr. W. O. Tarver, who will at times report proceedings of the Court. Here W. O. Tarver was duly sworn as reporter by the Judge Advocate.

* * * * *

132 CAPTAIN CASSIUS E. GILLETTE, Corps of Engineers, United States Army, is here re-called as a witness for the prosecution, and testifies as follows:

Direct Examniation (Continued):

Questions by the Judge-Advocate.

Q. I asked you yesterday, Captain, for what purpose mattresses are used, and you made a fitting answer. I now ask you whether there are any other uses for mattresses than the one you gave?

A. Yes, sir, some times in fresh water where there is no danger from destruction by the teredo, mattresses and other wood structures can be used to save more expensive material, and where the foundation is very soft mattresses would be used somewhat more extensively in the structure than they would in the case I have mentioned. In certain cases they have been used too instead of building a jetty out of stone on a mattress foundation, mattresses have been interspersed in layers in the jetty spaces to bind it together somewhat better. That use is dangerous in sea water on account of the teredo, which is a kind of organism which feeds upon wood and destroys wood very rapidly when conditions are favorable for its growth.

Q. Why not use stone?

A. Stone is better, probably, in a generality of cases because it is more durable, shell growth, marine growth form on it and it is not liable to be destroyed by the teredo. In a great many cases the foundation instead of being of mattresses has been of small stone. These small stone break the force of the wave action, the water action, the current action on the sand, which would undermine an open jetty and has been found to act just about as well as the mattresses. Mattresses are made flexible, and, at the same time, strong and elastic and have the advantage of following down any sand that might wash out from under it, and at the same time hold together so that the individual pieces could not wash down. If they were covered with sand, or even with a layer of small rock
133 promptly the teredo is not so liable to attack them, but any wooden structure in salt water is always very dangerously exposed to the teredo.

Q. What are the advantages or disadvantages or the different types of mattress mentioned in the specification?

A. If used in a work like that at Cumberland Sound on a jetty of log mattresses, which consist, as the specifications state, of a raft of logs with a load of brush on top.

Q. That is the first specification? The first design?

A. That is the first design, yes, sir. That is rather a dangerous thing to use for this reason: unless promptly covered by sand or other protection the teredo will destroy it very rapidly. The individual logs are very stiff and no matter how large a load of rock were placed upon it in the angle below and between and underneath the logs, will always be a passageway, and if the logs are placed as they usually are, crosswise of the jetty, just as soon as the jetty begins to do any work, that is to cause a banking up of water on the one side or the other, or even from the pressure caused by the waves or the water current will follow this tube, this angular space, under, beneath and between the two logs from one side of the jetty to the other and wash out the sand and this has been known to occur to such an extent that the whole mass of log mattress will sink bodily down into the sand quite a distance, so that the use of log mattresses at a place like Cumberland Sound would be a very dangerous experiment. It might succeed, it probably would not. In addition to that, logs are quite expensive, a log mattress is quite an expensive mattress unless it should happen that logs could be found very near the water-ways. Where the trees have to be cut down and hauled overland some distance it would make it very expensive. The second design, consisting of fascines, which may be said to be artificial small logs with the good qualities of logs and without the bad qualities. That second design is much better adapted to the case we are considering because when the weight, even a moderate weight, is put upon it, the 134 fascines, however tightly bound, will to a certain extent, flatten out, and this angular space underneath and between two fascines will not be continuous, the angles and crooks and knobs of the brush will project out into space, so that the water will not have a clear current through there, and that space, if the sand is in motion, which it is usually in this case, will promptly fill up and the mattress will not sink. At the same time it is flexible, tough and elastic. The bindings are good and usually strong; the individual pieces of which fascines are composed are strong and elastic. The binding poles used in the specifications here give little stiffness, which will disappear under the heavy load of the jetty, and it is usual in a great many countries, in using these fascines, to use fas-

cines having binders that are flexible, that will bend rather than break, which poles are not so good at. The second design is by far the better design of the 3 for the case we have in hand, assuming the price to be the same or irrespective of price. The second design amounts simply to a more carefully and closely specified third design, with the addition of cross fascines every 6 feet on top of the fascines composing the mattress proper. The second design consists of a grillage and layer of fascines on top of it, and then fascines crossing every 6 feet, and then a grillage on top of that. The third design consists of a grillage and then a layer of fascines, then omits the cross fascines, then the grillage. In the second design the grillage or space between the grillage poles is distinctly specified as 6 feet; in the third design it may be anywhere from 4 to 8 feet, at the option of the engineer officer. The fascines which are described separately are quite distinctly specified. In the second design there is an additional specification for fascines, in that the brush must be so placed as to break joints and make continuous fascines extending clear across the mattress. By inference in the third design, or in all fascines, that requirement is there because with brush ten or twelve feet long, you cannot make a mattress from thirty to one hundred feet long 135 without breaking joint; so that the second design for use in single mattresses would be the most advantageous, leaving the question of price out of the question. The specifications dont prescribe that the mattresses shall be placed, one on top of the other, nor do they forbid it. For use in fresh water, or where the teredo is not liable to work, there is no practical difference between the usefulness of the mattresses, except that the log mattress would be more advantageous as it would occupy or fill up space better. In case of muddy water it would not silt up quite so rapidly.

Q. Not quite so rapidly as what—not fill up so rapidly as what?

A. As in brush mattresses, not quite so rapidly as the brush mattress.

Q. Captain, I would like to have you particularize more clearly than you did yesterday the existing improvements in Savannah Harbor.

A. The improvements I mentioned yesterday is, or are, the improvements now going on. The improvements heretofore carried out were originally directed toward the contraction of the water-way. If the water has a chance to spread out

in a stream like this, a tidal estuary, it will be correspondingly shallow. There is a certain amount of tide-water to flow in and out every tide. There is a certain amount of river water coming all the time and increasing in time of floods. As a general proposition, if a certain amount of water has to go past a certain space it would require a greater depth the more it's narrowed. The original improvements consisted in building spur dykes out from the shore, done a few at a time. It was not particularly successful but helped. After that, about 1892 or 1890 the project was adopted, and the carrying of it out was begun on a large scale, in 1892, which consisted in narrowing up the space for the water to flow out, by training walls, which are, in all essential particulars the same thing as jetties, being put up in the river instead of at the mouth of it, they narrow the channel and the water flowing out scours the material out between them or, if it does not scour the material out it will or may 136 keep it scoured out after it is once dredged.

Q. That is, it does not allow the silt or sediment to deposit?

A. Its tendency is to prevent a deposit of silt. The whole thing depends upon velocity. A stream flowing with a certain low velocity will carry sand or silt or mud of a certain weight or fineness, out, it may carry material which it could not stir up or carry off, material which chanced to be deposited and settled or became compact; so that frequently an improvement will maintain itself where it would not create the depth. The project for the Savannah Harbor contemplated both these things. The training walls were for the maintainance; the dredging to create the channel. Training walls were built at about low water mark. The reason of that is to facilitate the inflow of the tide. If built up to high water mark, or above low water mark, the higher they are built the more they prevent the full range of the tide. The more obstructions are placed to tidal flow, the less height it will rise up in the upper reaches, so as to avoid that, the jetties and training walls are only built at about low tide. It is a curious thing that, while at first glance it would appear that the water that would come in over those jetties would go out over them, but experiment and actual observation, in many cases, demonstrates that this is not so, owing to the fact that there is a large body of water, the ocean, at one end of the improvement and the small slues or marshes at the other end. It is

an observed fact that the water will flow in and over the jetties, and more will go out between them, scouring out. That is the principle upon which the improvement in the Savannah Harbor has been made. The training walls in the upper reaches on the harbor that is, near Savannah, have not been built of mattresses, as described. They have not required the width or extent that mattresses would naturally give them, but piling has been used to permit or narrower walls, using less material. Two rows of piling have been driven, and along the greater part of the improvements, which were begun in 1892, the 137 piling was placed 8 feet apart in the rows, and the rows were 8 feet apart, then the piling was fastened together with timbers, with timbers iron bolts and braces near low water mark, and the space between the piling filled in with bundles of brush running with the training wall. A light load of stone has been placed upon those bundles. The material dredged out the channel has been largely dumped behind the training wall. That, together with the silt coming down from the river has made natural banks in a great many cases back of the training walls. That is the general outline of the work done. At the lower end of the river, where it is more subject to storms and the weather, continuing out to sea, mattresses have been used, and the jetties and training walls have been wider at the base. The water is deeper there too, is additional reason for it.

Q. The court can ascertain from the public records filed in the Engineers office at this District the character of all those improvements and the material used, can it?

A. Yes, sir. The jetties or training walls at the lower end of the river in this case mattresses have not been used simply for the foundation for the rock, but many mattresses have been built, many courses, as it has been called of mattresses have been built of bundles of brush piled one on top of the other and launched from the barge all together, and then a light load of rock placed upon top of that.

Q. Well, that can all be ascertained from the records, I understand, for the information of the court?

A. From the records entirely.

Q. And the amount of each material named in the contract?

A. Yes, sir.

Q. Captain, what kind of string are those bundles tied with? (Referring to bundles in the court room).

A. Those are tied with the string I described yesterday, I

call it ordinary lath yarn, it is slightly stronger than grocers cord, I said yesterday grocers cord, I should have said
138 lath yarn, it is quite strong material, its strength can be inferred from the use to which it is put, that of tying bundles of laths.

Q. Did the stone used by the contractors fall within the description called for by any of the specifications?

A. As reported to me?

Q. Only of your own knowledge, Captain.

A. I have never tested it.

Q. You have never tested it? Then we shall have to get that from some other witness. I will ask you, Captain, to interpret the different specifications touching the stone to be furnished.

A. The specifications for stone are precisely the same in the two contracts. First-class stone,—This stone must be of good quality and not liable to disintegrate under the action of the weather or salt water; it must be hard and weigh not less, dry, than 165 pounds to the cubic foot. The blocks must be of suitable random sizes, varying in weight from one ton to ten tons, but 50 per cent of the blocks must weight five tons or over. In shape the blocks must be angular, the small dimension being not less than 1/3 the greatest. Quarry stone is required, no boulders nor rip-rap from boulders will be received. That paragraph means precisely what it says; the hardness is not distinctly specified. By quarry stone is simply meant quarried out of the original deposit of rock, not from loose boulders. Second-class stone:—This stone must be of good quality and not liable to disintegrate under the action of the weather or salt water. It must be hard and therefore, weigh not less than 155 pounds,—dry—to the cubic foot. The blocks of little lighter stone than the blocks in the specifications, must be of suitably random sizes, varying in weight from 500 pounds to five tons, but 50 per cent of the blocks must weigh one ton or over. In shape the blocks must be angular, the smallest dimension being not less than 1/3 the greatest. Quarry stone is required; no boulders nor rip-rap from boulders will be received. That is the same as in the previous interpretations. Third-class stone:—This stone must be of good quality and not liable to disintegrate under the
139 action of the weather or of salt water. It must be hard and weigh not less, dry, than 150 pounds to the cubic foot, it therefore can be of lighter stone than either of the other classes. The blocks must be of suitably random sizes,

varying in weight from 25 to 1000 pounds. In shape the blocks must be angular, the smallest dimension being not less than one third the greatest. That is just as it says. Fourth Class Stone.—This stone must be of good quality and not liable to disintegrate under the action of the weather or of salt water. Its specific gravity must be not less than 2.4 and it must be as hard as hard burned brick. That means precisely the same thing as in the specification for third class stone, that it shall weigh not less than 150 pounds per cubic foot. The weight of water being sixty two and a half pounds a cubic foot, a specific gravity of 2.4 means that it must be 2.4 times as heavy as water, and 2.4 times sixty two and a half per cubic foot, and two and four tenths times sixty two and a half is 150, so there is no distinction in the specification between the weight of third class stone and the weight of fourth class stone, it is simply worded in a different manner. It must be as hard as hard burned brick, that more distinctly specifies how hard it must be than the specification for third class stone, which is, it must be hard. The blocks must be of suitably random sizes, varying in weight from fifteen to 250 pounds. The lower limit of weight in the third class stone is 25 pounds. The lower limit in weight of fourth class stone is 15 pounds. The superior limit in the weight of third class stone is 1000 pounds, and of fourth class stone only 250 pounds. There is therefore wide latitude left to the Engineer officer in determining the class of the stone. If its lower limit is 25 pounds. There is no distinct specification as to what properation of the third class stone shall be of the larger sizes, therefore the aggregate of fourth class stone with nothing under 25 pounds, that is a very small variation there; if it had a few large pieces in it it could be accepted as third class stone,
excepting the expression it shall be of suitably random
140 sizes. That is quite indefinite. It would be probably
taken to mean with a reasonable distribution of pounds in weight from the lower limit to the higher limit, but it is a rather vague expression. In shape the blocks,—that is the fourth class stone,—must be as nearly cubical as possible; the smallest dimension being not less than 1/3 the greatest. The quality, shape and size of all stone must be satisfactory to the engineer officer in charge. All stone must be placed in position on the jetties or spurs, or on shore between high and low water, as required by the engineer officer in charge. All stone must be placed—that sentence is repeated again in this specification—. Such stone which is used above mean low

water, shall at the option of the said engineer officer in charge, be either placed in position by hand or thrown on rip-rap. That is somewhat indefinite. Placed in position by hand could possibly require the stone to be placed on edge, or to fit into each other. Simply to be thrown on rip-rap is to be thrown out as thrown from a wagon, cart or raft. Stone placed more than two feet outside of the position assigned, will not be received or paid for. That explains itself.

Q. Prior to the time you saw the mattresses to which you testified yesterday, and of which a photograph is before the Court, had you given any orders in relation to changing the character of the mattresses required by the terms of the contract, under which they were going to be placed?

A. No, sir. I issued no orders whatever of any kind. Orders in existence when I took charge were all understood to be in force until changed by my order.

Q. You know of your own knowledge, Captain, anything of the character of Florida stone?

A. Yes, sir.

Q. Please state it.

A. Only superficially. It is a limestone, some of it is in appearance, and examining by lifting, it is light. Other of it is more compact, almost flinty in appearance and a great deal heavier There is a great range in its weight per cubic 141 foot. You can tell that by looking at it.

Q. You have handled stone of that character?

A. I have handled it, yes, sir.

Q. Where is this stone found in Florida which you have handled?

A. I don't know of my own knowledge.

Q. How then do you know that you handled Florida stone?

A. I handled stone on the cars at the wharf here in Savannah, several car-loads of it—I walked over several car-loads, handled some of it, examined it and inspected it in company with one of the contractors, and he told me where it came from,—that it came from Florida.

Judge-Advocate: (Addressing counsel for the accused) I presume you don't object to that?

Mr. Blair: We don't object to that.

Judge-Advocate: It is immaterial, the witness is yours, gentlemen.

* * * * *

Questions by Mr. Blair.

Q. Captain Gillette, in what year did you graduate from the Military Academy?

A. In 1884.

Q. What was your first station?

A. Willetts Point, New York Harbor.

145 Q. How long did you remain there?

A. About two years and a half, until April 1887.

Q. Where did you go from that place?

A. Cincinnati, Ohio.

Q. How long did you remain at Cincinnati.

A. Two days.

Q. From there where did you?

A. Zanesville, Ohio.

Q. How long were you there?

A. About five years.

Q. What were your duties at Zanesville?

A. I was most of the time Assistant in local charge of the improvements of the Muskingum River.

Q. What was the nature of the improvements, in general terms?

A. Slack water navigation, locks and dams.

Q Any mattresses or fascines, such as have been used in this improvement here? used in that improvement?

A. No, sir.

Q. In what year did you leave Zanesville?

A. In 1892.

Q. Where did you go then?

A. Chicago, Illinois.

Q. How long were you there?

A. Until September 1893.

Q. What were your duties there, and connected with what?

A. I was engineer officer of the Department of the Missouri, on the Staff of General Miles.

Q. You had no constructing there to do, did you?

A. None, whatever.

Q. And where did you go from Chicago?

A. San Francisco, California.

Q. When did you arrive at San Francisco?

A. On the 6th of September 1893.

146 Q. And how long did you remain there?

A. Until the 12th of July 1897.

Q. And what were your duties there?

A. In the first place, I was Recorder and Officer in charge of the records, and of Inspection of the California Debris Commission.

Q. For how long?

A. I held that position, practically, until I was relieved from duty in California; about four years.

Q. And your duties in that connection, did they have anything to do with construction work of any kind?

A. Yes, sir.

Q. What sort of construction work?

A. Brush dams and other dams.

Q. In what rivers?

A. In the tributaries, Sacramento, San Joahquin, Feather and Yuba Rivers for the retention of the debris from the hydraulic mines.

Q. And in that construction, were any mattresses, such as had been used in this construction in the Savannah District used?

A. Not as mattresses. A great deal of brush was used. The majority of the dams were built of my designing and under my orders, direct orders, for holding this debris.

Q. How as brush used?

A. It was cut down as brush and placed in the dams with the butts down stream, usually; with poles or small logs across to separate the brush into layers so that the water flowing over the dams fell on the butts of the brush, or on the bottom below.

Q. This brush was not laid into bundles in any way?

A. It was not. It was made by the owners of the mines or dams themselves.

Q. What other constructive work were you engaged in in California.

A. For the last year and a half, or so, I had the construction of jetties at Cumberland Sound.

147 Q. I asked you about California.

A. At Humbolt Bay, Humbolt Harbor, the construction work involved the use of brush on the Sacramento River to prevent cut-offs.

Q. In the Sacramento River, or the use of brush in that river, was used how.

A. It was used in a manner somewhat analagous to what I have described in building debris dams in the mountains.

Q. And in Humboldt Harbor, about how did you use brush there.

A. The brush was used as mattress foundation for the rock jetties.

Q. How were those mattresses constructed.

A. They were constructed of bundles of brush built into mattresses underneath a railway track on a trestle built immediately over the point at which they were to be used. They were small mattresses, 20, 25 or 30 feet wide, sometimes built wider, with a grillage at the bottom. Each piece was continuous sawed timber six inches square made of so-called pine, really a Douglass fir. The grillage was made, I suppose, between three and five feet apart, and each piece was continuous. Clear across this grillage was suspended cross-poles from the trestle. Upon these was placed bundles of brush, sumply bundled for handling, choked rather tighter than these bundles here. It was straighter brush made of fir or red-wood growth. Those bundles were placed in layers on top of this lower grillage, and then another grillage was placed on top of that, and the whole compressed as tightly as could be done by a power, preferrably screw power, which was left to the contractor.

Q. How thick was the brush between the two grillages?

A. About three feet.

Q. After compression?

A. After compression.

Q. How many of those mattresses did you sink, or were sunk under your direct supervision, or your control, rather.

A. I dont remember, quite a large number. They 148 were at work for one whole season and part of another while I was there, and they were sinking mattresses all the time.

Q. You stated in your direct-examination of yesterday that in this improvement at Humbolt Harbor there was expended a million and three quarter dollars?

A. No, sir; the total cost of the improvement when complete will be a million and three-quarter dollars, estimated.

Q. Up to the time you left there, how much of that appropriation had been expended?

A. As I remember it, about three-fifths.

Q. About a million?

A. I think so, I have not refreshed my memory about that.

Q. How much of that was expended under your direct control?

A. The usual season's earnings were about $300,000.00.

I was there about a season and a half. I think about $400,000.00; I would not be positive about that. I have not refreshed my memory at all.

Q. In your report, which is Appendix QQ. in the annual report of the Chief of Engineers, for the year 1897, it is stated that in that year you used of brush mattresses 8,812.2 cubic yards, is that correct, as your memory serves you?

A. if it is stated there, it is correct. (Here book is handed to witness) That is correct, yes, sir.

Q. Now, how many, using that as a basis of brush mattresses, did you put in or cause to be put in, in the other half season that you were there?

A. About how many mattresses?

Q. Yes,—or of cubic yards of brush mattresses.

A. I think about half that many.

Q. Then altogether, with respect to brush mattresses, such as you described, you used in Humboldt Bay, there were put in place under your supervision and control something like 12,000 cubic yards?

A. I should think roughly that.

Q. Now, in going over your career, since you left the Academy, have you at any other place than those men-
149 tioned, any experience whatever in the putting in of mattresses, such as are used down here?

A. I have never used such mattresses as were used here and never will.

Q. Or such mattresses as are called for by the specifications of these contracts?

A. No, sir.

Q. Then, as a matter of fact, when you reached here, the 20th day of last July you had never had, as an engineer, any practical experience of any sort whatever with any mattresses of the kind described in the specifications under these contracts?

A. If you say precisely of the kind, no. If you say of the same kind, from an engineering standpoint, yes.

Q. You refer to the same kind from an engineering standpoint, by that you mean the mattress you used in Humboldt Bay?

A. Yes, sir.

Q. Your experience there is limited to 12,000 cubic yards, approximately?

A. Yes, sir, approximately.

Q. You say from an engineering standpoint the mat-

tresses which you used there are quite similar to the ones called for by these specifications?

A. They are used there for essentially the same purposes.

Q. What is that purpose?

A. That purpose is to prevent the wave action or current action, or other action of the water from undermining the jetty and carrying the individual stones of which it may be composed deeper into the sand.

Q. How did you prepare the brush in the Humboldt mattresses?

A. The brush was specified to be simply cut and tied up into bundles.

Q. Well, how was it cut?

A. Just simply cut with an ax as it grew on the groubd. I understand, not of my own knowledge, that the con-150 tractors bought it from the farmers or ranchers as they are called there, so much—

Q. I don't care about how they bought it, I want to understand how the brush was prepared.

A. It was simply cut and piled up in bundles.

Q. Was it trimmed in any way?

A. Not trimmed in any way at all, and not so specified.

Q. The leaves left on?

A. The foliage was left on. It was of cedar or fir order, and there were no leaves on it. It was very flexible brush.

Q. You say that after you saw the mat sunk on or about the 31st of August, or the last of July or the first of August last at Cumberland Sound, you thereupon gave orders to the contractors to construct mats strictly in accordance with those specifications

A. No, sir; I gave orders to the Assistant Engineer to have that done.

Q. And you say pursuant to those orders, certain mats were constructed which complied with the specifications, as you interpret them?

A. With the exception of the splicing of the poles, yes.

Q. How many of those mats did you have constructed?

A. As I remember, five or six. There were four of those mats I spoke about. I told the Assistant Engineer he could allow the contractor to put in a single course of single mattresses, as I understood the specifications to mean; I think he put in two or three of these. Then I ordered the construction of mattresses stopped, as I believed from the state of

the mattresses that no further mattresses were necessary in that locality.

Q. Then what became of the mats, so far as you know, that were constructed according to specifiations?

A. They were put in the works.

Q. All of them?

A. All of them.

Q. Were there any of those mattresses made according to the specifications near here?

151 A. I ordered some made.

Q. Well, do you know whether any were made?

A. They had been reported as made, yes, sir.

Q. Do you know what became of those mattresses?

A. They are reported sunk, or were to be sunk in the breakwater. There may have been others constructed that were not sunk, I dont know, I only know what is reported to me.

Q. Those four that you had sunk, one upon top of the other, how were they sunk?

A. They were sunk in the usual manner, I was not present.

Q. How did you expect them to be sunk?

A. Sunk in the jetties.

Q. Singly?

A. No, sir.

Q. Together?

A. Together.

Q. A layer of stone over each mat? And then you did order all sunk at once and a layer of stone put over all four?

A. Yes, but not as the engineer, these mattresses were constructed for experimental purposes, but it was only just to the contractor to allow it to go on.

Q. And paid for out of the appropriation?

A. No, sir, it is not paid for.

Q. To be paid for?

A. Not under my jurisdiction.

Q. Where did you sink them?

A. In the jetty at Cumberland Sound.

Q. You say you dont intend to pay the contractor for those mattresses?

A. Under present conditions, I should asked to be relieved from duty here rather than pay the Atlantic Contracting Company any money—

Q. Never mind that, Captain Gillette, I asked you a
152 categorical question. (Repeat the question, to the reporter).

Reporter: You say you do not intend to pay the contractors for those mattresses?

A. At present, no, sir.

Q. At any time?

A. I do not now intend to pay them for them, my present intention is not to pay him for them.

Q. Is that intention— Was that intention formed because the mats did not comply with the specifications of the contract?

A. No, sir.

Q. Is it because you ordered them sunk four at a time and not singly?

A. No, sir.

Q. Do you know anything about a mattress across the river here?

A. I have seen a mattress laying on a barge over there.

Q. Do you know anything how it got there, or what it is?

A. I do not, not of my own knowledge.

Q. Have you had any report of it?

A. No, sir, not that I recollect, I saw the mattress there one day and was surprised to see it, I did not know it was there. It looks like the mattress I had the photograph of here yesterday. I did not examine it carefully.

Q. You do not know whether that is built according to the specification. as you interpret them?

A. No, sir, I only rowedbby in a boat. I could not get more than a casual glance at it.

Q. How far were you from it?

A. 30 or 40 feet.

Q. In what respect did it depart from the specifications, as you interpret them, if any?

A. I was under neath it, and the timbers were between me and it most of the way.

Q.. You could see under the grillage, could not you?
153 A.. I think I remember seeing the grillage poles at the ends as they stuck out over the poles.

Q. You could see the fascines, could not you?

A. I must have seen the ends of them.

Q. How did they appear to you?

A. They appeared to me like the ends of fascines. The ends of poles or trimmed brush.

Q. According to the specifications?

A. I did not make a close enough examination to notice that.

Q. Did you have anybody in the camp where that mattress was built, that you know of?

A. I do not know where that mattress was built, I had an inspector in the mat camps wherever I had mats built.

Q. Then, if that mattress was constructed since your arival here it was seen by some inspector of yours, was it not?

A. That would be a difficult question to answer that mat may have been constructed by anybody anywhere. I do not know to whom it belongs, I presume that is one of the mats built by the Atlantic Contracting Company under charge of one of my inspectors at one of their constructing camps, but I know absolutely nothing about it, and have not even been told.

Q. You spoke yesterday of this spun yarn, or lath yarn as probably as strong, but not twice as strong as single string of good grocers twine. Does either of these (handing witness samples of cord) answer the description of the grocers twine you had in your mind?

A. No, sir, the statement I made was in view—

Q. Well, that's enough Captain, you can explain that on Re-direct.

A. Excuse me.

Q. You said this morning, if I recollect it, that it was probably twice as strong as good grocers cord, or that you meant grocers cord yesterday. Would that be a sample of the grocers cord that you had in mind (handing witness piece of cord)?

154 A. Oh, no, sir, it is a great deal stronger than any of these strings. It is a great deal stronger than my description of it as I worded it would mean; it was stronger than I thought it was.

Q. Then you have examined it since yesterday?

A. Yes, sir; I had not tested its strength then. The words I used give the appearance of much less strength than it has.

Q. Did you test it since your testimony?

A. Yes sir, I didn't succeed in breaking it; I tried it and found it very much stronger than I supposed it was—very much stronger.

Q. Did you test it other than merely trying it with your hands?

A. That is all; it may be stronger even than I think it is now. It is quite strong material.

Q. In your testimony of yesterday you spoke of the purpose for which mattresses are used on a sandy bottom, and said that they were used as an apron to avoid the effect of the waves, or such effect as a wave might have, I give your exact language: "The matress is designed to spread an apron or cover over a large mass of sand, so that the effects of the wave action cannot extend clear across the mattress; a little wave action at one point will not affect the whole jetty." That is correct, is it not?

A. I think that is about right, sir.

Q. And these mattresses, described in the specifications to these contracts were designed for that purpose, were they?

A. I do not know what they were designed for, I did not design them.

Q. Would they serve that purpose?

A. The second design would, I think, very well.

Q. The third would not?

A. Not so well as the second, unless the specifications for the third were very rigidly interpreted.

Q. And the strictness of the interpretation would come in where, on the fascine?

A. Yes, sir, the fascines are not so distinctly specified as in the others.

155 Q. And how should those fascines be constructed?

A. They should be constructed by trimming the brush straight as can be obtained, binding that in the fascines with a an approved form of choker, choker is a technical term used in engineering.

Q. Yes, proceed.

A. For that purpose and firmly bound at intervals of two feet.

Q. In other words, to make a bundle of rods, as you stated this morning?

A. Rods, would be a fair word to use, withes would be the American word.

Q. That means denuded of leaves and twigs?

A. Yes, sir, according to those specifications.

Q. Yes, and I think you said this morning that the effect of such a fascine would be practically that of a pole?

A. I beg your pardon, I didn't intend to say so.

Q. What would be the effect of such a fascine, on the gathering and holding of silt.

A. A fascine like that would have a much better effect on gathering and holding silt than a log would, or two logs side by side because the space I described underneath and between them would be taken up and they would break the current that would flow through them.

Q. I think you said this morning that a fascine built in that way was an artificial small log?

A. It could be regarded as such, yes, sir.

Q. With the exception, then, as I understand you now, that it would gather a little more silt than a real small log or natural log, is that correct?

A. You have not finished the sentence, I dont know what you are going to say.

Q. You say it is like a natural small log; I say then, with the exception that it would probably, as you said, gather a little more silt than the natural small log, is that clear?

156 A. It would be an artificial small log, with that exception, is that what you mean?

Mr. Blair: Yes.

A. It would be with that exception and some other exceptions.

Q. In respect to silt, it would gather more silt?

A. It certainly would, yes, sir.

Q. Is that the only kind of fascine you know anything about?

A. The word fascine can be used to cover other things, if they are described under that word.

Q. Was your definition yesterday an exhaustive definition of fascine?

A. I do not know that it was; I do not remember exactly what it was.

Q. You said yesterday, "A fascine means a cylindrical bundle of rods or small sticks, tightly bound at short intervals."

A. That is Webster's definition of the word "fascine", as nearly as I can recall it.

Q. That is a military fascine, is it not?

A. The dictionary does not say "military."

Q. That is a fascine you built as a cadet at West Point?

A. That would fairly describe it.

Q. That is a fascine for what?—and the purpose of that fascine is what?

A. Used mostly for providing banks inside a fortification, and—

Q. To stop bullets?

A. Not particularly, dirt would stop the bullets.

Q. I don't speak of the modern bullets now, but formerly, when fascines were more used.

A. When fascines were more in use, their function was not to stop a bullet; their function was to hold the bank and the bank would stop the bullet.

Q. Have you ever heard or read in your professional career of such a thing as an engineering fascine as contra-distinguished from a military fascine?

157 A. I have never seen that expression defined as such.

Q. Are you familiar with the construction of the mattresses in Galveston Harbor?

A. I am not, I have read of the construction of the mattresses there, but it has been some years ago.

Q. I will ask you to examine that sketch and state if the fascines indicated there are fascines answering to your definition of a fascine, being small cylindrical rods (Handing witness pamphlet)?

A. It is difficult to tell from that drawing whether the brush has been stripped of its branches or merely of its leaves, there dont appear to be any leaves on it. I would say that was a drawing of a structure which could be called a fascine if the description underneath it described what is indicated here. The word fascine could be used to describe a bundle of brush with the leaves on if it was so specified.

Q. Then a brush fascine, as I understand you, would not mean a fascine as you defined it?

A. Most any fascine is built of brush, from a military or engineering standpoint.

Q. Do you consider brush and cylindrical small rods as equivalent terms?

A. I do not.

Q. A bundle of rods or small sticks, do you consider that as equivalent to a bundle of brush tightly choked?

A. Not precisely, no, sir. There is a shade of difference in the meaning.

Q. Then, if the specifications call for a brush fascine you would not put in a fascine made of rods or small sticks tightly bound at intervals?

A. Trimmed brush would be rods or small sticks.

Q. Answer my question, if you please.

A. Excuse me, please.

Mr. Blair (to the reporter): Repeat the question.

158 Reporter: Then if the specifications call for a brush fascine, you would not put in a fascine made of rods or small sticks, tightly bound at intervals?

A. It would depend entirely upon what the specifications were.

Q. In reading Section 38 yesterday on your direct examination, you left out the first section—the first sentence of that section,—please read it now.

A. Fascines—All fascines will be made of live brush, of cedar, water oak, myrtle, sweet gum, or any other variety of wood approved by the engineer officer in charge.

Q. Does that mean small rods?

A. It means that the material for making the fascines shall come from such brush, not from trees, limbs, etc., but brush.

Q. Does it mean rods or small sticks?

A. That sentence alone does not specify whether it does or not,.

Q. If that sentence stood alone, what would it mean? Rods, or small sticks or brush?

A. It would not mean anything definite.

Q. Would it mean rods or small sticks? Would they be included in the description brush, live brush?

A. Rods or small sticks can be made of live brush.

Q. Captain, I think you are not answering the question fairly?

A. I'll try again sir.

Q. "All fascines will be made of live brush, of cedar, and so forth"—would a fascine made of rods or small sticks answer that description?

A. Yes, under certain conditions.

Here the Judge-Advocate asks that the Court suspend the examination for a minute.

Here the Court at 12.55 O'clock P. M. Suspends the Examination. At 1 O'clock P. M. the President Announced that the Court Is Ready, and the Examination Is Continued as Follows:

Q. Do I understand you correctly now, that the speci-
159 cations calling for fascines of live brush, would not be met by a fascine of rods or small sticks?

A. I am unable to answer the question,—it is not definite.

Q. If, to that specification were added, "The brush used shall be as straight and well trimmed as can be obtained", what would your answer be?

A. That the fascine must be made of sticks, rods or single pieces of trimmed brush of those woods.

Q. Denuded of twigs and leaves?

A. Yes, sir. The word "well trimmed" is unfortunately used. The sentence is not grammatical.

Q. Well, never mind the grammatical construction; but as to the engineering construction?

A. The sentence should read, "The brush will be as straight as can be obtained and be well trimmed". You cannot—

Q. Never mind the grammatical construction,—the engineering construction,—you understand by the term as used in these specifications, that the twigs and leaves of the brush shall be lopped off?

A. I cannot conceive of any other meaning of it.

Q. You then know of no technical definition of trimmed as a term of art in specifications of this kind, other than the colloquial definition, to-wit;—denuding or taking away the twigs and leaves from the brush?

A. I cannot imagine any other meaning.

Q. In other words, leave a purely military fascine?

A. It would be a fascine similar to those used in military operations.

Q. Such as you constructed when a cadet?

A. Yes, sir; if I wanted to construct a fascine of that description, I would use those specifications.

Q. You say a log mattress would not gather silt or sand as rapidly as a mattress built according to the third design, according to those specifications as you understand them.?

A. I said according to the second design—of the low-
160 est degree of the third design.

Q.. Would mattresses of the third design, as you understand that, gather more silt than a log mattress?

A. If the specfications were thoroughly interpreted it would.

Q. Interpreted as you interpret it, the fascines to be made of rods denuded of twigs?

A. Yes, sir.

Q. It would gather more silt than the log fascine?

A. Yes, sir.

Q. Why?

A. Because, as I explained, when the weight of the jetty comes upon it it would be impossible to choke the fascine so tightly but what they would flatten out, and the space underneath and between two adjacent fascines would almost entirely disappear or be very rough and irregular with the straightest brush that can be reasonably obtained on this coast.

Q. There would, however, be left the long grillage poles, being at right angles with the jetty, there would be left an entrance between the sand and the bottom of the brush?

A. That grillage pole would be squeezed down in the sand with the weight of the mattress alone, with thousands of pounds of rock upon it it would cut no figure at all.

Q. Before you put the rock on, how deep would it go down in the sand?

A. Oh, that would depend, it would probably settle in the sand just the weight of the mattress. If the mattress were made of fresh live green brush its own weight would make it sink into the sand.

Q. You mean rods or small sticks?

A. Trimmed brush. It would sink into the sand quite considerably. It would be necessary to put some stone on it or you could not get it to the bottom very readily, without putting some stone on it.

Q. The only reason then that you can assign for the
161 better action of the mattresses of the third design than the log mattresses is that those fascines of small sticks or rods, or trimmed brush, as you interpret it, would be bent down and come in contact with the sand underneath?

A. That is not the only reason I assign.

Q. What other reason?

A. The reason I assigned was that a properly constructed fascine would be more flexible than that.

Q. That is included in what I said,—that it would bend down under the stone and come in contact with the sand underneath?

A. With that statement, yes. Then you omit the other point that the fascines would flatten out and cause the angle below and between the two adjacent ones to disappear. Both those things are caused by the same quality.

Q. You spoke a while ago of the specific gravity of the fourth class of stone being 2.4, that specification calls for the same grade of stone as the third class, is that right?

A. The same weight per cubic foot, yes, sir.

Q. Do you mean that, or do you mean by that, don't you, that a cubic foot of rock of the fourth class must practically be homogeneous in structure?

A. Yes, all rocks have pores though. It must have. Any space in it must be such that the water could not run inside the rock. We don't want rock with a hole in it, or rock that absorbed water permanently. To measure the specific gravity, the rock is put into water and the weight in water is determined.

Q. I understand, Captain. In so determining, do you include or exclude the holes in the rock?

A. To include such holes as the water would run into, but not those small holes or pores where the water would settle.

Q. Speaking then as an expert on that subject of the porous rock, speaking as an expert then, with a given piece of rock, which is not only porous but filled with cavities, you determine the specific gravity by including such cavities
162 as are not reached by the water when the rock is submerged, do you?

A. Yes, sir. If I understand your statement, that is right. The specific gravity of a piece of rock is determined by weighing it in water and then weighing it in air, if the water is absorbed into the rock your result will be vitiated thereby.

Q. Then if you were to have, as sometimes happens in nature, a round piece of granite with a hole in the middle, impervious to water, you would weigh that rock in air and then weigh it in water and determine its specific gravity, including the hole?

A. The hole would not cut any figure at all in that case.

Q. Then, when you say granite of a certain specific gravity, the granite may vary in all sorts of ways, although it may be of precisely the same texture?

A. Yes, sir, it might be in any and all sorts of shapes, round, square and irregular shapes, or any shape, it dont make any difference.

Q. You say then, the specific gravity of granite—I give the figures at random—is 2.7, you mean it is only that particular piece that you determine, any other piece of precisely the same texture and with this round hole that I speak of would be 2.2?

A. That might have precisely the same specific gravity as the other.

Q. Then you misunderstand my question, I asked you if

you included the hole, when you determine the weight of the substance?

A. The hole dont have any effect. If I answered it the other way I misunderstood your question.

Q. Then, in truth, the proper way of determining the specific gravity of a certain specimen of rock that contains air holes would be to take a pile of that rock and determine the specific gravity?

A. You mean if it had air holes that the water would not use? You mean air holes separated from the surface that the water could not reach?

163 Q. Yes, such as I explained with a hole in the center, such as, for instance, any piece of rock with a hole in the center?

A. I thought you meant a hole in the center clear through it.

Q. I expressly said "a round hole in the granite from which the water is excluded"?

A. I misunderstood you. I never heard of a piece of granite of that kind.

Q. We will assume that to be so then?

A. A geode would answer that description, then you would get a wrong determination.

Q. In other words, you would be weighing the hole?

A. No, you would not be weighing the hole.

Q. Taking it with the value of the hole?

A. Not exactly that, but roughly that.

Q. But your determination of the specific gravity would be too light, too little?

A. It would be too light, too little, the specific gravity would be too small.

Q. In your testimony this morning you added considerably to your description of the engineering effect of those mats. Have you been talking to any one, aside from the Judge-Advocate since yesterday on that subject?

A. On the subject of the engineering effect of mattresses? I discussed it about a half minute with my Assistant-Engineer this morning and asked him if he had had any experience in log mats settling down into the sand.

Q. Any one else?

A. No, sir, not that I re-call.

Q. The additional testimony then, which you gave this morning, was due to your own reflection?

A. To my own reflection. I believe Mr. Giessler ventured

a theory as to the possibility of making a mathematical statement of the effect of a fascine by taking a cross section, but I disagreed with him entirely.

164 Q. Is not it true that a fascine made of brush without the twigs into the leaves taken off, green brush, live brush, tightly bound into the fascines would collect silt more rapidly than the military fascine which you were describing?

A. It is possible.

Q. Well, is it true, do you know?

A. No one can predict definitely just what will happen with a fascine or mattress on a sandy bar.

Q. Then Captain, you either know, or you don't know whether such a fascine as I have described would have a tendency to collect more silt than the one composed of rods. Now, if you do know kindly state it. If you dont know, kindly say so.

A. The strict answer to that would be that I do not know positively because you did not definitely describe how loose this bundle was to be. There would be more room in a bundle like that for sand, and if the sand were taken or collected up, it would probably be filled full, and for a given number of cubic yards or cubic feet it would have the great advantage of being enormously cheaper.

Q. Before you came here you met Captain Carter in New York?

A. No, sir.

Q. Or in Washington?

A. Yes, sir, in Washington.

Q. And talked with him about this work?

A. Very briefly.

Q. How is that?

A. I talked with him very briefly.

Q. Did he describe—He described the works in general terms here, didn't he?

A. In very general terms, yes, sir.

Q. And you received from him letters of introduction down here, didn't you?

A. Yes, sir.

165 Q. And an invitation to occupy the house rented by Capt. Carter?

A. Capt. Carter told me his house was rented until the first of October, and he had to pay for it any how, and if I wanted to occupy a room out there, there was a place I could sleep; yes sir.

Q. And did Capt. Carter say it in that way?
A. I don't remember the words; no, sir.
Q. Was it as ungracious a permission as that?
A. Oh, it was perfectly gracious. I did not mean to convey the impression that it was ungracious. It was the same kind of permission as one officer would make to another to take and occupy my quarters, or to occupy one room.
Q. Did he specify one room?
A. No, sir;—the invitation was perfectly cordial and perfectly complete.
Q. In pursuance of that invitation, you did go and occupy his quarters for a short time?
A. I did, for a short time, yes, sir.
Q. Did not Capt. Carter say to you at that interview that if you wanted any explanation with respect to the work that he would be glad to furnish you with it?
A. If he did, I didn't hear ir, or don't remember it.
Q. You never did ask any explanation of him after coming here, did you?
A. No, sir; I didn't consider I needed any.
Q. Nor as to the methods of contractors?
A. Methods of contractors?
Q. You asked no explanation of him as to the method of contractors pursued down here?
A. No, sir; I have asked him no questions whatever since I came here.
Q. You have had no communication with him?
A. Yes, sir.
Q. In that line, with respect to your work?
A. In respect to the contractors, yes, sir. He wrote me a letter.
166 Q. With respect to the work down here?
A. With respect to paying for it; yes, sir.
Q. And with respect to the manner with which the work was conducted?
A. No, sir.
Q. The manner of making the mattresses, or fascines?
A. None whatever.
Q. I will ask you, Captain, if this (showing witness a map) is a representation of the detached extension to the training wall down here in the Savannah Harbor?
A. No, sir.
Q. Is it approximately correct?

A. Yes, sir, it is in the same location and approximately represents the wall, that is where the wall was proposed to be.

Q. Where it was proposed to be?

A. Where it was proposed to be, it has been located in a little different shape, a slightly different location.

Q. Materially different?

A. No, sir.

Q. In what direction do the currents run from the Savannah River to the Sea?

Through those two training walls on the ebb tide?

A. Well, approximately East.

Q. Approximately in this direction? (Indicating).

A. Yes, sir.

Q. Now, out here is Calabogue Sound, is it not?

A. Yes, sir.

Q. And out here (indicating), in what direction do the currents run there?

A. I have never been there, I do not know.

Q. Assuming, Captain, that the currents from Calabogue Sound on the ebb, running approximately in this direction (indicating), assuming that fact, and the current running from the Savannah River, as you have described it, ex-
167 plain how, as an engineering proposition, the proposed estension of that North training wall would tend to throw a greater volume of water down in this direction (indicating)?

A. Well, the direction of the axis of those two training walls that you speak of strikes that structure about the middle at an angle and that would naturally throw it off in that direction, it is simply a problem of deflection.

Q. A current running from here, (indicating) would strike somewhere out here (indicating)?

A. Nearer the middle of the axis.

Q. That would tend to throw it across this bar?

A. Yes, sir.

Q. That is the reason why you said yesterday in your examination that one purpose of this proposed extension to the training wall was to throw a greater volume of water across that bar?

A. I was simply stating what I understood to be the intention of the people who designed that, I did not design it and I do not know strictly what their intention or expectation was.

Q. You stated it unequivocally, and as a matter of fact, and of your own knowledge?

A. As I understood, I was simply giving an outline of the work and their object. I was not holding myself strictly to my own knowledge.

Q. If the currents are as indicated there, the accession of water across the bar would be very slight indeed, would it not?

A. That is a question I have not investigated. I do not know how slight or how important it would be. I understood that was one of the reasons for constructing that breakwater, the main reason being to protect shipping.

Q. Never mind the reason if you do not know.

A. I did not design it, sir.

Q. You stated, however, that the breakwater is an ex-
168 tension of the Oyster Bed training wall, the one on the left as you go down stream?

A. That is the name of it, the detached extension to the oyster bed training walls. It is somewhat out at sea, somewhat out from the other training wall, and from Tybee Roads.

Q. It is designed to protect shipping against North-east gales?

A. Also, as I understand it, I did not design it.

Q. Also to help throw a greater quantity of water across the outer bar?

A. That is my understanding of what it was designed for.

Q. Then you do not want to be understood as stating that as an engineering fact within your knowledge?

A. No, sir, I have no knowledge whatever of its object when it was built. None, whatever, I have read the reports. As I understood it, that was the object.

Q. Does it appear anywhere in the reports in your office, or anywhere in the project for this improvement that the design of that detached breakwater or detached extension was to throw a greater volume of water across the bar?

A. I have not examined the reports or projects specifically with that object in view. Such is my impression.

Q. If the axis of that proposed estension is in the general line of the current is not it true, as an engineering fact, that it would have no effect on the outer bar?

A. No practical effect, no, sir. If the currents run parallel to the breakwater it would have no deflecting influence on that certain thing.

Q. If it had no deflecting influence on the currents it would not throw a greater volume of water across the bar?

A. It might have a concentrating influence on it, acting as one jetty on Tybee Island has on the other.

Q. It could not concentrate the water if parallel with the current.

A. Not very well, no, sir.

Q. Then, as a matter of fact, if that detached exten-
169 sion is practically parallel with the currents flowing alongside of it it would not have any effect on the outer bar?

A. None to speak of, no, sir.

Q. So then, if it be true that it is practically parallel with those currents, then you would want to modify your answer of yesterday and say it was not designed for that?

A. I would not say what it was designed for. My answer yesterday was not giving accurate engineering facts, simply the location of the works, I do not know what it was designed for, of my own knowledge. I do not believe as it is located it has any great effect upon that, that is one of the possible reasons for its existence.

Q. Then, when you said "and also to help throw a greater quantity of water across the bar you spoke loosely?

A. That is my impression that I have gathered from reading the official reports of this district.

Q. You do not want to be considered now as stating as a fact in hydraulic engineering that the effect, the probable effect, of that detached extension is to throw a greater amount of water across the bar?

A. No, I would want to study the subject before I expressed an engineering opinion upon it.

Q. You said yesterday, or. at least, it is so reported, that the inspector is the agent of the contractor?

A. I did not so intend.

Q. I did not think so. The inspector is an employe of the Government?

A. Yes, sir.

Q. Paid by the Government?

A. Yes, sir.

Q. And appointed by the engineer?

A. Yes, sir.

Q. He has nothing to do with the contractor, no order to receive from him?

170 A. He ought not to.

Q. I say, did he?

A. Do you mean any particular contractor?
Q. I ask you what, in point of law?
A. An inspector on a contract is, as you say, employed by the Government and paid by the Government.
Q. And appointed by the engineer in charge?
A. Yes, sir. His duties are to inspect and measure materials delivered, beyond that he has nothing to do with the contractors.
Q. Do you remember the number of the map that you saw sunk in Cumberland Sound? The first one?
A. No, sir, I do not.
Q. Can it be obtained in your office?
A. Yes, sir.
Q. Will you furnish me with that?
Judge-Advocate: Do you want it now?
Mr. Rose: No, I dont care for it now.
Q. When you said yesterday that you had made an immediate study of these contracts when you first came down here, you did say that yesterday, didnt you?
A. I did not intend to express that I had made an immediate thorough study of it, as I remember it I read the specification over, I think I had a copy with me.
Q. The question is: "When you reached here these two existing contracts with the Atlantic Contracting Company, did you make yourself familiar with their terms at once," you answered "Yes, sir"?
A. Well, no; that answer, as I remember it, might be modified, I do not remember exactly when I made myself familiar with them. I have familiarized myself with them all the time since I have been here. I did not make a detailed study of those contracts and specifications at once. No, sir.
Q. Then you did not make yourself familiar with the 171 details at once?
A. That depends upon the meaning of the word "familiar#. I made myself sufficiently familiar to find out what was going on on the work, more from an engineering view than anything else.
Q. Then you do not include in the words, "making yourself familiar with the specifications," that with respect to stone?
A. I think I read them.
Q. By "at once" do you mean prior to August 1, after reaching here July 30?
Mr. Rose: The 20th.
Q. The 20th?

A. Yes, I think I read the specifications over before I went down to Tybee; I wont be positive about that.

Q. Then when you said yesterday, "I was not familiar enough with the specifications for rock to notice whether or not it filled them," you meant by that to qualify that first assertion that you had made yourself familiar with the specifications at once?

A. Yes, sir; that tells how familiar I was with that particular element.

Q. Were you more familiar with any other element than that of stone?

A I cant say I was.

Q. Then, having your attention particularly directed to it, if you were asked the question now, "You found when you reached here these two existing contracts with the Atlantic Contracting Company, did you make yourself familiar with their terms at once?"—what would your answer be?

A. My answer would be that I familiarized myself with the contract sufficiently to understand what was going on on that work, how the work was being carried out from an engineering point of view, how those jetties were being constructed. I rapidly familiarized myself with them after I made my first inspection, and I have continued that familiarization into details ever since.

172 Q. Then you would not say "Yes, sir" in answer to that question now?

A. not from the point of view you put upon it, it would hardly be a sufficiently explanatory answer.

Q. You spoke of the nature of the improvements in the Savannah River. That has resulted, has it not, in a great improvement in the depth of the channel?

A. The reports so state, and, while I have no personal knowledge, to the best of my belief, there has been a great improvement in the depth.

Q. Have you examined any chart showing the depth of water in '92, or prior thereto in the Savannah River from here to Tybee?

A. I have looked at such charts, but not to charge my mind with sufficient definite information for cross examination about them.

Q. I do not mean other than to get at it in an approximate way?

A. Yes, sir.

Q. Can you say from that examination, or from any

specific examination, or from any observation that you have made upon passages up and down of vessels in front of this City. Can you say whether or not the channel has materially deepened?

A. Since 1892?

Q. Yes?

A. I think there is no doubt whatever that it has very materially deepened.

Q. It can therefore be predicated of the improvements between here any Tybee, or from a point above here and the Tybee Roads that the experiment has been a successful one, or that the work had been successful?

A. The channel has increased in depth and it has held up to the present time, except at the upper end.

Q. That is not an answer to my question? I asked if it has been successful?

A. I must ask what do you mean by successful?

173 Q. The purpose I assume was, as you know, to increase the depth?

A. Permanently, yes, sir. I assume permanently. It may have been temporarily; I do not know what the intention was.

Q. It was certainly to increase the depth whether temporarily or permanently?

A. Certainly.

Q. Then you say it has increased the depth?

A. At least, temporarily, I cannot tell about the permament part.

Q. Do you make that answer because you have not been here long enough to study it?

A. No, sir; because I am not a prophet.

Q. You know from the present existing conditions whether you would be a prophet or merely an engineering officer, and also a witness before this court martial;—you know from existing conditions, and from the conditions as they existed prior to this contract, that the probability is that the channel has deepened will be permanent?

A. Hardly,—no sir.

Q. The conditions remaining practically the same with respect to this river, what would your answer be?

A. My answer would be that thus far the increased channel, the deep channel, has filled in from the upper end, from material brought down the Savannah river; the upper mile has shallowed or shoaled about four feet. The contractor for

dredging has now begun work on it, and my assistant engineer reports he will have to take out 180,000 cubic yards of sand to restore it to the condition it was one year ago.

Q. Do you know what the estimate for the yearly maintenance was in beginning the improvement?

A. I do not; at some time in the improvement there has been an estimate for $50,000.00 a year, as I remember it.

Q. Has that ever been exceeded that you know?

A. Nothing has ever yet been spent for maintenance. The work has just begun; this is the first year.

174 Q. It has held its own practically, say, for the first two years?

A. As far as I know the improvement has held its own, except at the upper end as, it was built.

Q. And the shallowing at the upper end, is that by reason of a defect in the project, or a defect in the construction of the work?

A. I do not think it is due to either; I think it was probably to be expected. It was like this,—my engineering opinion is that the contraction work of the training walls, while they did not narrow the channel sufficiently to cause it to deepen, though it narrowed it sufficiently to make the water carry off the finer material out to sea, and the heavier materials brought down the river have been deposited in the upper end. As I understand it, the object was not to expect that these works would cause deepening alone, unless dredging is done, and it is in the project. As to whether dredging is specified, I do not know.

Q. And if the project was to deepen the water and the result has been the deepening to the extent proposed by the project, and if the projects also included annual dredging expenses, or expenses for the maintenance of dredging, and that has not been exceeded or reached up to the present time, would you not say that it had been a successful work?

A. No work is successful—

Q. I ask you up to the present time,—would you not say it has been a successful work?

A. Up to the present time the work has been successful unquestionably;—it has caused a deepening.

Q. As far as coming up to the work that was contemplated?

A. No.

Q. It has certainly come within the estimate for maintenance, has it not, if no money has been expended for maintenance, not this far?

A. The completion of the contract was one year ago. Since that time there has been nothing expended. You would not begin to maintain a work the moment the digging was
175 stopped. The channel has been left to itself just one year, and 180,000 cubic yards of sand have filled into it.

Q. On the upper reaches.

A. Yes, sir, the upper reaches, the upper one mile.

Q. How much would it cost to remove that at the present contract prices?

A. The present contract price is 13 cents per cubic yard, and 180,000 cubic yards of it would cost between twenty-five and thirty thousand dollars.

Q. Do you know the draft of vessels that can enter this harbor and go out to sea?

A. Not of my own knowledge, but I believe a vessel drawing 25 feet has gone out, certainly 24—24 or 25.

Q. Do you know what has become of the four course mattress you sunk at Cumberland Sound?

A. No, sir, my attention has never been attracted towards it since it was sunk.

Q. Have you had any examinations made, or ordered any examination made of it, or of the Sound in its vicinity?

A. I have had a cross section made, numerous cross sections made of those jetties, in October and November of last year.

Q. That does not answer the question.

A. No, I have had no special examination ordered for that mat, I have not thought of it since I went down.

Q. You say you have had cross sections made of that jetty down in Cumberland Sound?

A. Yes, sir, soundings made for the purpose of making cross sections.

Q. You say you have had soundings made for the purpose of making cross sections?

A. Cross sections are drawings.

Q. Do you mean cross sections or cross profiles?

A. Well, I see no particular distinction between the two terms.

Q. Will your drawings made from your soundings,
176 or the so-called cross sections show the interior of the jetty?

A. No, sir; it don't show anything about it.

Q. Has the term, "cross section" in engineering a different meaning from its meaning colloquially?

A. Possibly. A drawing, showing a cross section might sometimes be strictly called a cross profile. It would perhaps, show only the outside, where a section shows something of the interior.

Q. Which is it, cross section, or cross profile?

A. Possibly cross profile would be a more accurate description of it. Any engineer would understand if you said "cross section."

Mr. Blair: I believe that is all.

Re-direct Examination.

Questions by the Judge Advocate:

Q. You have been asked, Captain, as to your first meeting with the accused?

A. Yes sir.

Q. And as to the nature of your intercourse with him in Washington, as I understood?

A. Yes sir.

Q. And that he tendered you certain hospitalities?

A. Yes sir.

Q. What were they?

A. He gave me some letters of introduction to some gentlemen here, and tendered me the use of his house until the 1st. of October.

Q. Did you go into his house?

A. I did.

Q. Immediately upon your arrival?

A. Yes sir.

Q. How long did you continue to occupy it?

A. Only until I found, I dont remember the date—

Mr. Blair;—Let him answer that question by the date, and approximately his reasons. Why not ask, if he was going to give them.

177 Q. I have not asked that. I ask you how long you remained, can you give the exact date that you vacated those quarters?

A. I cannot.

Q. Approximately, Captain?

A. Approximately, the 1st of August. A few days after my first inspection at Cumberland Sound.

Q. That is as near as you can give it?

A. Yes, sir.

Q. You testified in your cross examination as to the con-

versation you had with the accused in Washington. Did you give all the conversation that you had with him?

A. No, sir, I didn't give any of it to speak of. I talked with him about the works on Cumberland Sound, and I talked with him about the personel of the employees.

Q. Can you state to the court what the conversation was that you had with him. How long were you with him, in his company.

A. I think about an hour and a half, as I remember it.

Q. Well, state as near as you can what was said between you.

A. He got a map of these improvements at Savannah Harbor and told me what had been done, roughly, and in a very few words, what was going on and the building of this breakwater. He says "we used mattresses out there, we dont use a military fascine. He says, I found they were not standing up out on the bar as I expected they would, as I had a right to expect they would, because they sanded up so well in Cumberland Sound. By sanding up, I understood him to mean, they filled in with sand. He told me about the various employees, gave me their peculiarities and qualifications. I remember a few points about each one. There are two or three of them. I dont recall anything else.

Q. Anything said about your station?

A. Yes, I recollection he told me, as I remember it, that he had seen, or would see, the Chief of Engineers about the matter, and it was very hot down here, and that it would 178 be advantageous for me to get permission to visit New York at such times as I was not needed in Savannah and return to Savannah whenever my presence was needed during the hot season, and, as I remember it, he said he had asked the Chief of Engineers to grant me that permission, if I applied for it. I remember distinctly he said not to ask to take stations in New York, but to get permission to visit New York. It was in mid-summer and very hot down here.

Q. Are you through?

A. That is all. Yes, sir, with that.

Q. Was anything said about the means of getting to and fro?

A. Yes, sir, he said a steamboat company was very kind and gave officers passes so it would not cost anything, but I could go to New York very comfortably. I dont remember whether he said the steamboat company usually gave passes or would give me a pass, any how, the idea was I could go to New York without expense.

Judge-Advocate: Has the court any question to ask this witness?

The President: Any member of the court desire to ask any question?

By the President: The court has none.

Judge-Advocate: That is all, Captain.

Judge-Advocate: May it please the court, I will state that I have wired the Adjutant-General of the Army asking for authority for the court, the accused, and my assistant, Captain McClure and Captain Gillette and myself to proceed to Augusta to take the testimony of Mr. Marion Twiggs. I shall at least receive a response to that before the time for us to meet again and will take it upon myself to notify individually the President and each member of the court and the counsel as to whether we shall meet in Augusta or here when we adjourn, and I shall move for an adjournment from now until Tuesday morning, to meet either here or at Augusta, as circumstances may determine. There are certain papers relating to this case, quite a large volume of them, which have not yet been examined by the prosecution, which were
179 turned over to me when I took charge of this case, and I am unwilling to take the seal from the box, or to examine the papers, except in the presence of the accused and his counsel, or such of the counsel as they may select. My motion, therefore, is that we adjourn, as I said, until Tuesday morning.

I will amend my suggestion, may it please the Court, to make the adjournment, and move to adjourn to meet in this court room at half-past two Monday afternoon.

The President: If there are no objections, the Court stands adjourned until that hour.

By a Member: I move we make it one o'clock; half-past two is the dinner hour here in Savannah.

Judge-Advocate: I would prefer to make it 9 or 10 o'clock, as for that, but that would probably interfere with my labor.

By a Member: I withdraw my motion.

By the President: The Court then stands adjourned until Monday, at half-past two o'clock.

(Here the Court, at 1.55 o'clock P. M., adjourned until Monday, January 17, until half-past two o'clock, P. M.

THOMAS F. BARR
Col. & Asst. Judge Adv. Genl.
Judge Advocate.

180 United States Court Room,
Savannah, Ga.,
January 17th, 1898.

The Court met pursuant to adjournment at 2:30 o'clock p. m.

Present:

All the members of the Court and the Judge-Advocate.

The accused, his counsel and the reporter D. O. Tarver, were also present.

The president: The Court will come to order. (Addressing the Judge-Advocate). Read the telegram.

Judge-Advocate: This is a telegram handed me by the President of the Court, and reads as follows:

"Washington, D. C., Jan'y. 15th, 1898.

"To Brig. Gen. E. S. Otis,

"Presient, Court Martial,

"Savannah, Ga.

"In accordance with request in telegram this date from "Col. Barr, Judge-Advocate of the Court, the Acting Secre- "tary of War directs that you and the other members and "the Judge-Advocate of the Court Martial of which you are "President, and the accused, Capt. Carter, Capt. C. E. Gil- "lette, Corps. of Engineers, Capt. C. McClure, Eighteenth In- "fantry, and the Reporter proceed as necessary for public "service to Augusta, Ga., and return, for purpose of taking "testimony of Marion Twiggs, a material witness for the "prosecution.

"SAM BRECK.
"Adjt. Gen'l."

Judge-Advocate: I move now, Mr. President, that this Court adjourn to meet in Augusta, Ga., to-morrow morning at half past nine o'clock.

181 The President: The Court stands adjourned until to-morrow morning at half past nine o'clock, to meet at Augusta, Ga.

THOMAS F. BARR
Col. & Asst. Judge Adv. Genl.
Judge Advocate.

182 Reading Room, Arlington Hotel,
Augusta, Ga.,
January 18th, 1898.

The Court met pursuant to its adjournment of yesterday, at 9:50 o'clock a. m.

Present:

All the members of the Court and the Judge-Advocate.

The accused, Mr. Rose and Mr. Charlton of his counsel, and the reporter, W. O. Tarver, were also present.

The President: The Court will come to order.

The Judge-Advocate: Mr. President, I have just learned of the condition of the witness, Mr. Twiggs, who is at the residence of his brother, and it will be impossible to bring him to us here, in view of the day we have, and I move that we adjourn to Mr. Twiggs' residence where he has kindly offered us the use of his parlor for the examination of his brother, and we can proceed from here.

The President: What hour will be convenient for Counsel?

The Judge-Advocate: It is now five minutes to ten o'clock and I am at the disposal of the Court for any hour that may be suggested.

The President: If it is the sentiment of the Court, we will proceed at once to his residence.

Residence of A. J. Twiggs,
Corner Elbert & Greene Streets,
Augusta, Ga.,
January 18th, 1898.

The Court met pursuant to adjournment at 10:20 a. m.

Present:

183 All the members of the Court and the Judge-Advocate.

The accused, Mr. Rose and Mr. Charlton of his counsel, and the reporter, W. O. Tarver, were also present.

MARION TWIGGS, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by the Judge-Advocate.

Q. Please state your full name?

A. Marion Twiggs.

Q. What has been your connection with the improvements at Cumberland Sound?

A. I was assistant-engineer,

Q. For how long a period?

A. A period of about eight months.

Q. From the beginning of the contract?

A. From the beginning of the contract.

Q. Until about what time?

A. Until about the first of September.

Q. Were you present at an inspection of a mattress by Capt. Gillette soon after he relieved Capt. Carter?

A. I was.

Q. Where was this inspection?

A. That inspection was near old Fernandina, Fla.,—Near the Government reservation.

Q. The mattress was under inspection at that time.

A. The mattress was under inspection at that time.

Q. Describe the mattress.

A. The mattress was a mattress built according to the third design, modified by Capt. Carter, and that mat-
184 tress had a bottom grillage and then came a layer of brush and a grillage on top of that, and a layer of brush, and so on, until there was a mattress of eight courses formed.

Q. Was the mattress constructed according to the specifications of the contract?

A. It was not.

Q. (Handing witness photograph) I hand you a photograph of a mattress which has been before the Court; or I hand you two photographs of a mattress which has been before the Court. Do you recognize them?

A. That was a mattress inspected by Capt. Gillette—, two views of it.

Q. How did the mattress compare in construction and quality to those previously sunk in the work during the present contract?

A. It was about an average mattress.

Q. Did it essentially vary in any particular?

A. Not that I noticed.

Q. Did you supervise the construction of a mattress shortly after the inspection referred to,—of a mattress built according to the specifications under the orders of Capt. Gillette?

A. I did.

Q. What were his orders?
A. His orders were to build one mattress strictly according to the specifications.
Q. Which specifications—, which design?
A. The third design.
Q. (Handing witness a photograph.) Is this a photograph of that mattress?
A. That is not a photograph of that mattress; that
185 is a single course mattress.
The Judge-Advocate: That is not the photograph. Excuse me—, my assistant has handed me the wrong photograph. There was no photograph taken of that.
The Court: The Court will look into these two photographs. (Here the Judge-Advocate handed the President the photographs referred to).
Q. (The Judge-Advocate continuing:) Please describe any mattress you built under instructions of Capt. Gillette in acordance with the third design?
A. It was a grillage first formed of live pine poles placed about six feet from center to center, and then there was a layer of closely compacted fascines placed on top of that grillage. Those fascines, I think, were fifty feet long. Then on top of that layer of fascines was another grillage, and the lower and top grillages were made fast by wire, and on top of that was placed another layer of fascines closely mashed up together, and so on. In other words, there was a single mat placed on each of them.
Q. How many courses?
A. Four courses.
Q. Was there a bottom grillage to the second mat or to each mat?
A. To each mat; yes, sir.
Q. You made a report to Capt. Gillette on August 12th, 1897, in which you referred to two mattresses: Did you mean those mattresses in regard to which you have just testified?
A. I did, sir.
Q. How did you weigh them?
A. By displacement of the water.
Q. Are the results of that measurement correctly given in the report you have testified to?
186 A. I believe they are correctly given.
Q. (Handing witness paper:) Is that the report, Mr. Twiggs?
A. That is the report, sir.

Judge-Advocate: It is marked "Fernandina, Fla., August "12, 1897. Twiggs, Marion, Asst. Eng. Submits report on "measurement, and computing displacement of barges 37 and "42, carrying old style and new style mats, and showing re-"duced estimate of mattress work for July 1-31, 1897."

Q. (The Judge-Advocate continuing:) That mattress you weighed was not the mattress that was inspected by Capt. Gillette, I understand?

A. It was not the mattress inspected by Capt. Gillette.

Q. I mean the first mattress in regard to which you testified?

A. No, sir.

Q. One subsequently offered by the contractors?

A. How is that?

Q. Was it one subsequently offered by the contractors?

A. That is correct.

Q. Is the table of widths, etc., given in your report of August 5th, 1897, based on your personal knowledge?

A. It is based on my personal knowledge.

Q. (Handing witness paper:) Is that the report of August 5th to which you refer?

A. That is the report.

Q. Are the statements made therein correct?

A. I believe them to be correct.

The Judge-Advocate: This is a statement consisting of four pages endorsed, "Fernandina, Fla.? August 5, 1897,

"Twiggs, Marion, Asst. Engineer, Submits tables show-
187 "ing height (average), width and No. of cubic yards of

"stone on mats placed on North and South Jetty under "contract of October 8th, 1896, by the Atlantic Contracting "Company," signed by Mr. Twiggs.

Q. (The Judge-Advocate continuing:) Was there any change made in the construction of mattresses between the last inspection made by Capt. Carter and the first inspection made by Capt. Gillette.

A. There was a change at the first inspection made by Capt. Gillette.

Q. Prior to that inspection?

A. No change at all made.

Q. Between the last time an inspection was made by the accused, Capt. Carter, and the first inspection by Capt. Gillette?

A. No change.

Q. Have you tested the rock delivered as fourth-class rock under the specifications of this contract, known as Florida limestone, for specific gravity?

A. I did test it.

Q. Did it comply with the requirements of the specifications of the contract for fourth-class rock?

A. It did not.

Q. Did you make a report on it?

A. I did.

Q. (Handing witness paper:) Is this it?

A. It is, sir.

The Judge-Advocate: This is a report endorsed "Fer-"nandina, Fla., August 25, 1897. Twiggs, Marion, Asst. En-"gineer. Stone furnished by Atlantic Contracting Company "does not fill the specifications. Asks for instructions."

Q. (The Judge-Advocate continuing:) Was that a correct report?

188 A. I believe it to be.

Q. Were any Inspectors kept at the place where mattresses were built?

A. Only while one mattress was being built.

Q. That was when?

A. That was when the four-course mattress was being built.

Q. That was under Capt. Gillette's instructions?

A. Yes, sir.

Q. Prior to the arrival of Capt. Gillette were any Inspectors kept at the mattress camp?

A. No Inspectors kept there at all.

Q. Did Capt. Carter give any orders in regard to such inspections?

A. He did not.

Q. Did he see any of those mattresses such as you have described?

A. He saw several of them.

Q. What conversations, if any, have you had with the accused, since he was relieved from duty on subjects connected with his administration?

A. I only had one conversation with Capt. Carter in which he came to the Hospital. He said that the mats he had seen were the mats that he wanted built; that they suited him exactly. That is one particular point I remember. I was sick at the Savannah Hospital at that time.

Q. Was that the time when the Board was in session?

A. Just previous to that time; before that time at Savannah, two or three days.

Q. Prior to the arrival of the officers constituting the Board?

A. Yes, sir.

Q. Did you have any other conversation with him upon any other topic than his past administration?

189 A. Nothing that I think would bear on this case especially.

Q. Perhaps the Court had better judge of that, Mr. Twiggs. Will you state what the conversation was?

A. My memory is a little bad on that point now, and I do not think I can state it correctly.

Q. State as near as you can your recollection of it?

A. Capt. Carter asked me generally about the construction of the work, if I believed the fascines were built according to the specifications, and I told him I did not believe they were, and then he asked me about the general construction of the work, and did I feel free to come into his office and speak to him at any time about the work, and I told him I did not feel free to come into his office. He asked me why, and I told him I believed he was very friendly to Capt. Greene. That was about all.

Q. That is all you can recall at this time, Mr. Twiggs, of your talk with him?

A. Give me a minute, so I can think. (At this point, the examination was suspended for a few minutes on account of the physical condition of the witness.) (Witness continuing:) There is another point that I recall. Capt. Carter spoke of,—asked me about the different Inspectors, how they would probably testify, or something to that effect, and I mentioned different men,—Inspectors, Recorders, etc.,—and how I thought they would testify, and among them I mentioned the Inspector over my work, and he remarked that it didn't make any difference; he was weak. That is the only important point that I remember.

Q. In regard to the mattress, the two mattresses which were submitted, you examined the fascines, or so-called fascines used in their construction; were they, of themselves,

190 in compliance with the specifications of the third design?

A. The fascines used?

Q. Yes?

A. No; they were not.

Q. In what did they differ?
A. They were about fifteen feet long, and bound at irregular intervals, and not choked.
Q. Were they trimmed?
A. They were not trimmed.
Q. Not at all?
A. I noticed sometimes when there would be a big, rough place in there that interfered, and you could not mash it in there,—at times they would cut those large pieces off, but generally they were not trimmed at all.
Q. Were the mattresses used at Cumberland Sound essentially different from those built in Savannah harbor, with which you are familiar?
A. I think the mattresses built at Cumberland Sound were better than the mattresses I saw at Savannah Harbor.
Q. (By the Court:) Did he say "better?"
A. (By witness:) Yes, sir: the average mattress.
Q. (The Judge-Advocate continuing the examination:) What kind of timber was used in the construction of those mattresses?
A. Anything that happened to be on the ground. A force of hands was put out on the reservation, and they cut as they went along, and used whatever they happened to get in making the bundles of brush.
Q. Do you know how the force employed in the gathering of those bundles were paid?
A. They were paid by the bundle.
191 Q. They were not on the regular pay-roll of the contractors?
A. I don't think they were.
Q. Do you know of any kind of wood that grows in the vicinity of the mattress camp that has not been used in the construction of mattresses under this contract?
A. I do not.
Q. All kinds were used?
A. All kinds were used.
Q. Did you ever know of a case where Capt. Carter knew of anything being paid for on the Government pay-roll as personal services?
A. No, I do not know.
Q. (Handing witness drawing.) Did you make that map?
A. I did.
Q. Will you please describe it?
A. Those lines shown in black were the mats one hundred

feet apart, and one hundred feet wide, sunk on the sand at North Jetty, Cumberland Sound, and those mats shown in blue were a second course of mats sunk on top of the mats shown in black. Is there any other question which you wish to ask?

Q. How was the profile of the bottom line obtained?

A. The profile of that bottom line shown is the ground line on this map,—was the ground at the time the first course of mats was sunk, and before the mats were sunk, when the water was sufficiently smooth soundings would be made,—before the mats were sunk, and after the mats were sunk soundings would be made on top of the mats, which gave the lower black line. The whole profile was made after that method. The lower blue line shows the bottom that the top course of mats was sunk on. That was obtained in the same way. That was made after those mats were sunk. I believe
192 it was rather rough weather at that time. Most of those mats were sunk, I believe, before the soundings were made, and I tried to get between the mats with long sounding poles, and get to the bottom that way. A great many times the bottom was rock, and that top blue line shows the top of the second tier of mats.

Q. What does that indicate?

A. What do you mean?

Q. Whether there had been shrinkage, or not?

A. That indicates that there had been shrinkage from that top black line to the blue line.

Q. To that second line, there?

A. To that second line, there; that is, that indicates it to my mind.

Q. That map contains a correct record of the survey and soundings made by you?

A. As correct as could be made at that point.

Q. You are an Engineer by profession?

A. Yes, sir; I have been in that business all my life.

Judge-Advocate: (Handing document to the Court:) This map is offered in evidence, to go with the record of this Court. This map is described as follows: "Mats sunk on Range No. "3, North Jetty, Cumberland Sound, Ga. and Fla., during "July 21-31, 1897; horizontal scale 50 feet to 1 inch; vertical "scale, 10 feet to 1 inch." It will be attached to the record, marked "Augusta No. 1"

Q. (Judge-Advocate continuing.) (Handing witness paper:) What is that?

A. That is the letter of transmittal of that map.
Q. Its statements are correct?
A. I believe them to be.

Judge-Advocate: This is endorsed "Fernandina, Fla.,
193 "August 15th, 1897, Twiggs, Marion, Asst. Engineer. Re-
"ports that soundings were taken on August 12th on the
"mats sunk on the North Jetty during July 21st and 31st,
"1897."

Q. (Judge-Advocate continuing.) (Handing witness paper) What is that paper, Mr. Twiggs?
A. It is a table evidently submitted showing the amount of brush,—the amount as compared with the old bundles of the brush in the fascine.
Q. That table was not prepared by you?
A. That table was prepared by the Inspector.
Q. Do you know anything as to the accuracy of the contents of that from your personal knowledge?
A. No; I do not.

Judge-Advocate: This is as far as I care to interrogate this witness at present, and as the witness is weary I suggest a recess. I have two or three other questions for him later on.

The Court: If the Court can take a recess until half past three o'clock this afternoon, I am advised that the Court will be advised whether the witness can continue.

Mr. Charlton, Counsel for Defense: In order that there may be no misapprehension, I will state now that the Defendant will submit no questions at all to this witness; and if Mr. Twiggs can answer the two or three questions to be submitted by the Judge-Advocate now, we can get through. Mr. Twiggs may prefer that, and we can get through to-day.

Judge-Advocate: We cannot sit longer than three o'clock, Mr. President.

The Court: The Court will then take a recess until two o'clock this afternoon.

Judge-Advocate: The witness states that he would like to make a correction in his testimony, and perhaps he had better do it now.

194 Witness: I stated about the construction of that four-course mat according to the specifications. I made a misstatement there in stating that fascines were placed on grillages and then came grillages and then fascines and then grillages. It should have been a layer of fascines, and then a layer of—, It should have been the grillage was first con-

structed, and then a layer of fascines, and then another grillage on top of those fascines. The upper and lower fascines were made fast together by wire; then came a grillage, and then another layer of fascines on top of this grillage, and a grillage on top of the fascines, and all was bound securely together with wire again, and so on, until the four courses were complete.

The Court: If there are no objections, the Court will take a recess until two o'clock p. m., to meet here. (At 11:30 A. M. the Court took a recess.)

At two o'clock p. m., the Court reassembled at residence of A. J. Twiggs, corner Elbert and Greene streets, Augusta, Ga., on January 18th, 1898.

Present: All the members of the Court and the Judge Advocate.

The accused, Mr. Rose and Mr. Charlton of his counsel, and the reporter, W. O. Tarver, were also present

Interrogation of Marion Twiggs, a witness for the prosecution, resumed, as follows:

Direct Examination by the Judge-Advocate.

Q. You testified, Mr. Twiggs, in relation to a four-course mattress constructed in accordance with the third design. Was that a four course mattress or a mattress of four courses?

A. It was four mats on top of each other.

195 Q. Four distinct mats?

A. Four distinct mats.

Q. When the Atlantic Contracting Company commenced work at Cumberland Sound under the present contract, did you give them any instructions as to which of the three designs of mattresses should be used?

A. I did not give them any instructions when they commenced.

Q. Were you called upon for any information upon the subject?

A. No, sir.

Q. By them or by any one else?

A. No, sir.

Q. Do you know why not?

A. I think the contractor had received instructions from Capt. Carter.

Q. Did Capt. Carter tell you?
A. No, the contractor told me.
Mr. Charlton, of Counsel for Defense: I respectfully suggest that he ought to tell what the contractor told him.
Q. (The Judge-Advocate continuing:) Do the specifications provide for mattresses of six or eight courses?
A. No, sir.
Q. I refer to the contract with the Atlantic Contracting Company, for the improvements at Cumberland Sound?
A. No, sir.
Q. Were you furnished with a copy of the specifications or contract at the beginning of the work?
A. No, sir; I was not.
Q. Did you know the contract price of the mattresses?
A. I did not.
Q. Did you know the contract price of the stone?
196 A. I did not.
Q. What is your estimate of the cost of the mattress, as built, such as you have testified to,—the one Capt. Gillette inspected and of the same character as this that had been used and been sunk, under the contract, per square yard?
A. What is my estimate of the cost?
Q. Yes; of the cost of making?
A. Repeat that question again, please.
Q. What is your estimate of the cost of the mattress, as built, per square yard,—this mattress in regard to which you have testified?
A. My estimate is about ten cents.
Q. That was simply the construction of the mattress on the barge?
A. That included everything, I think,—sinking, too.
Q. Sinking and all?
A. Sinking and all.
Q. The cost of the mattress as sunk in place, for which the contractor was to be paid, was ten cents per square yard?
A. Ten cents per square yard.
Q. You have testified as to those bundles of which these mattresses were constructed: Were they properly filled with brush?
A. How is that?
Q. The bundles, or so-called fascines, were they properly filled with brush?
A. No, sir; I dont think they were; they were very loose.
Q. They were not drawn together?

A. They were not drawn together,—not choked.

Q. Can you recall, Mr. Twiggs, how many mattresses were inspected by Capt. Gillette before work stopped?

A. I know of two that he saw at Cumberland Sound—
197 three of them I think he saw there—, single-course mats.

Capt. Gillette, I think, saw two mattresses of the old design, and he saw two or three mattresses built according to the specifications, if I remember correctly.

Q. How did the second mattress, the eight-course mattress you weighed compare with the one shown in the photograph,—the first mattress inspected by Capt. Gillette?

A. How did it compare?

Q. Compare in construction?

A. It was a different mat entirely. It was compact, and built out of fascines, and the other mattress was built out of bundles of brush and very loose. It was entirely a different kind of mat. It is a hard matter to compare them exactly.

Q. I am referring to the two mattresses furnished by the contractors, the first and second one?

A. The two mattresses furnished by the contractors?

Q. Yes, the first one furnished and the next one furnished—how did they compare?

A. The second mattress was better constructed than the first one that Capt. Gillette saw.

Q. Was it constructed on the same general principles?

A. It was constructed on the same general principles, but I think there was a good deal more material in that mattress than in the first mattress Capt. Gillette saw.

Q. A greater number of bundles?

A. Yes, sir.

Q. Pressed closer together?

A. Pressed closer together.

Q. What kind of stone was used by the contractors
198 in the improvement at Cumberland Sound?

A. The majority of it was limestone obtained from Florida. Then, there was some granite used; most of that was obtained near Columbia, S. C., I believe.

Q. How much of that was used?

A. The granite?

Q. Yes?

A. I dont remember now the proportion. I know there was a great deal more limestone used.

Q. Do your reports show the quantity of each?

A. My reports show exactly.
Q. They are on file in the office of the Engineer in Savannah?
A. Yes, sir.
Q. That Florida limestone is the stone which you tested for specific gravity?
A. I tested that, and also the granite.
Q. And they are both to be found in the report?
A. No; I did not report the granite.
Q. Your report, then, only covers the Florida limestone?
A. It only covers the Florida limestone.
Judge-Advocate: Unless, Mr. Twiggs, you have some further testimony that you can think of that is properly relevant to the questions,—properly responsive to the questions which I have asked you, I have nothing further to ask you.
Witness: There is nothing I can think of, sir.
Mr. Charlton, of Counsel for Defense: May it please the Court, the Defense declines to examine the witness; or, rather, does not care to do so.
Q. (By the Court:) Under the present contract of 1.9 October 8th, 1896, for Cumberland Sound, did the average of the fascines which you saw contain enough brush to make fascines nine inches in diameter if they had been well choked.
A. There was not enough material in the bundle.
Q. (By the Court:) Was the brush distributed along the fascines so, that, if well choked, they would have been nearly uniform in diameter?
A. Sometimes they were and sometimes they were not: there was no regularity on that point.
Q. (By the Court:) Was the brush used in making the fascines good, live brush?
A. Generally it was.
Q. (By the Court:) The contract says the fascines shall be carefully and thoroughly made. Were they so made?
A. They were not so made.
Q. (By the Court:) In what respect were they not carefully and thoroughly made?
A. Sometimes,—very often the rope that they were bound with would slip or be broken, and it was tied very loosely, and a fascine would be larger at one place than at another. It seemed to be very small at certain places. And again, one or two men would be carrying a fascine, and it would bend double in the middle if they were not careful.

Q. (By the Court:) At about what average interval were they choked?

A. They were choked about two or two and one-half feet.

Q. (By the Court:) I would like to ask what proportion of brush the fascines con'ained compared to what they should have contained, whether one-fourth, one-third, one-half or one-tenth?

A. I expect about one-third.

Q. (By the Court:) I would like to ask if, in the 200 bundles that were used for the filling of mattresses, if that brush was bundled or loose?

A. It was bundled.

Q. (By the Court:) I should like to ask the witness if, at any time between the inception of the contract and the time when Capt. Carter was relieved from duty, he made any report to him of these various defects or defaults in the contract?

A. Capt. Carter inspected these bundles of brush. I saw him when he inspected them, and consequently it was unnecessary for me to make a report, as he made no remarks upon these bundles of brush.

Q. (By the Court:) Did you have any conversation with Capt. Carter concerning these failures, I mean from the inception of the contract to the time Capt. Carter was relieved?

A. I did not.

Q. (By the Court:) I would like to ask the witness what his specifif duties were, and what were the duties of the Inspector; what specific duties were assigned to you?

A. There was an Inspector appointed over the work to measure the material and inspect it. I was Assistant-Engineer in charge of the work, and I inspected a great deal of the material myself, or watched him to see if he was correct; but generally he did most of the inspecting. That was his principal duty. My principal duty was to see that everything went straight, and to attend to the survey work and the engineering work necessary.

Q. (By the Court:) In what locality—what locality were your duties confined to?

A. Cumberland Sound.

Q. (By the Court:) The entire Sound?

A. Yes, sir.

201 Q. (By the Court:) Can you state the date when the contractors first commenced work on this contract?

A. About the last part of November.
Q. (By the Court:) The latter part of November, 1896?
A. 1896.
Q. (By the Court:) Did you inspect all the mattresses placed in the Jetty?
A. Not all of them.
Q. (By the Court:) What proportion?
A. I inspected half of them.
Q. (By the Court:) How many were placed in the Jetty?
A. I dont remember the number now.
Q. (By the Court:) Relatively, as near as you can recall?
A. Over one hundred.
Q. (By the Court:) Were they all constructed after the manner of the one which Capt. Gillette and yourself inspected, the one you have testified to?
A. That was an average mattress; some of them were better than that, and some of them a little worse than that.
Q. (By the Court:) Was their general character the same?
A. The general character was the same.
Q. (By the Court:) Under the specifications and under the contract, how did you understand that these mats should be placed in the Jetties? One by one, and weighted down, or several bundled together and tied together, and all in one mass?
A. Several tied together in one mass.
Q. (By the Court:) How many tied together?
A. Eight.
Q. (By the Court:) They could tie all the mattresses together and sink them that way.
202 A. That was the instructions, to tie the different courses together, which were called eight-course mats, which we sunk.
Q. (By the Court:) You received instructions to receive mattresses of that kind?
A. Yes, sir.
Q. (By the Court:) From whom?
A. From Capt. Carter. They started at six courses and went up to eight courses.
Q. (By the Court:) How was it intended that those mattresses should be weighted—What instructions did you receive upon that point from Capt. Carter?
A. To place a sufficient amount of stone upon each mat-

tress to make it secure in case of storms, and to use as little stone as possible.

Q. (By the Court:) That, then, was a matter resting entirely in your discretion was it,—the amount of stone which you placed upon the mattresses?

A. The amount of stone. After the mattress work was finished, it was intended to go over all the mattresses then, and the stone work would be continued.

Q. (By the Court:) Were the mattresses constructed under Capt. Gillette's order ever placed in that Jetty—, the experimental mattress, was that ever placed in the Jetty?

A. They were placed in the Jetty.

Q. (By the Court:) Tell me how that was weighted?

A. Weighted with stone, about the usual amount I believe.

Q. (By the Court:) All the mats were placed together and stone on the top?

A. Stone on the top.

Q. (By the Court:) There was no stone between the 203 grillage in any way?

A. The stone would necessarily fall between the grillage on the top.

Q. (By the Court:) Yes, on the top, but, as I understand, these mats were all separate mats, grillage above and grillage below; now two courses of grillage came together on these mats, the interior grillage?

A. In the mat Capt. Gillette ordered, they did.

Q. (By the Court:) The two courses were tied together?

A. Yes, sir.

Q. (By the Court:) The top of one and the bottom of another?

A. Yes, sir.

Q. (By the Court:) No stone was placed, then, except on the top?

A. On the top. The mats he ordered consisted of four mats, all fast together. They were all sunk at once by placing the stone on top of that mat.

Q. (By the Court:) Those were his directions?

A. Directions on that one mat; that was the test mat.

Q. You saw the mattress placed in the Jetty?

A. Yes, sir; it was placed in the Jetty.

Q. (By the Court:) Any others placed in the Jetty subsequently?

A. Yes, sir; they were single course mats.

Q. (By the Court:) How were they placed?
A. They were placed on top of some of the old work there, and weighted with stone,—weighted on the top.
Q. (By the Court:) There was no stone between the mats?
A. Some stone would always fall between the mats; for instance, there would be a space of several feet—
Q. (By the Court:) But not placed there before the top mats were put on?
A. No, sir.
204 (By the Court:) Did you inspect all the mattresses placed in that Jetty until the contractor concluded work?
A. No, sir, I did not inspect all of them.
Q. (By the Court:) No, no; I mean after the experimental mat was made, that you say was placed in the Jetty?
A. Yes, sir.
Q. (By the Court:) How many more were placed in that Jetty subsequently to that time?
A. About three or four.
Q. (By the Court:) Were they placed on the top, along the Jetty on the top—, all of them?
A. Yes, sir, they were placed on top of a course of old mats.
Q. (By the Court:) I would like to ask what proportion of the Jetty received single course mats, and what proportion received mats of two, three or four or more courses?
A. I cannot answer that correctly now; I do not remember the data on that point.
Q. (By the Court:) How many courses did the mattresses contain that were being placed in the Jetty when Capt. Gillette took charge?
A. Eight courses.
Q. (By the Court:) Were those mattresses paid for per square yard for each course?
A. They were.
Q. (By the Court:) That is, if there was a mattress containing eight courses, the mattress in place would contain eight square yards, for ever square yard in each course, to be paid for: Is that correct?
A. Yes, sir.
205 Q. (By the Court:) In what condition did those mattresses go into the Jetty? Were they torn in getting them into the Jetty, or were they put in in good condition?

A. Sometimes they were torn, and sometimes they went in in good condition.

Q. Generally, did they hold together very well, or not?

A. They generally held together very well, except when there was a very heavy sea. Of course, heavy sea waves would somtimes break some of the wires, and some of the grillages were sometimes broken by barges.

Q. (By the Court:) Were they delivered into the Jetty on a scow, or towed into place?

A. They were put on top of a barge and dumped off; they were on a barge, and they were dumped off into place. Stone barges were anchored on either side of the mattress and everything made fast, and then the mattress was sunk from using the stone from both barges at the same time.

Q. (By the Court:) Was the surface of the mat pretty uniformly level when sunk?

A. That was the intention.

Q. (By the Court:) Was that the fact?

A. Generally it was.

Q. (By the Court:) What depth of water were they sunk in?

A. From ten to thirty-one feet, I believe.

Q. (By the Court:) I would like to ask about the binding: Were they mostly bound in wire or tarred rope?

A. The bundles of brush were bound with tarred rope: I don't know whether it was tarred rope exactly, but it was pretty strong and had tar on it; and the grillages were bound with wire.

Q. (By the Court:) What was the average thickness 206 of the ballast that was placed on the mats?

A. Less that a foot probably, or a foot of stone.

Q. (By the Court:) Was it thrown on by hand from scows?

A. Thrown on by hand.

Q. (By the Court:) Was there much loose brush perceptible on the mats, before the ballast was put on them, unsecured?

A. On some mats there was; some bundles would work out, but in smooth weather, as I said, they always went down in good shape.

Q. (By the Court:) Were there holes in the mats through which any ballast could go at all?

A. Generally there was not; sometimes it would fall down in one or two courses. There might be a bundle or two

missing in there, and the stone would go down that depth, and catch on something else.

Q. (By the Court:) You stated that the fascines were about fifteen feet in length?

A. Yes, sir.

Q. (By the Court:) How were they joined: Did they make good joints where one fascine butted against another?

A. Sometimes they did, and sometimes they did not.

Q. (By the Court:) On what system were those fascines fifteen feet in length placed in the mattress—in what order were they arranged,—in rows?

A. In rows.

Q. (By the Court:) Was there any breaking of joints between the rows where they united?

A. They broke joints frequently: that was the general intention.

Q. (By the Court:) Was that intention carried out?

A. Sometimes it was not. I noticed in one or two 207 cases that I had to call the attention of the contractor to that and tell him to break the joints.

Q. (By the Court:) Did he correct it when you called his attention to it?

A. He corrected it at that time.

Q. (By the Court:) Did you ever call the contractor's attention to any defects which he failed to correct?

A. I was calling his attention to defects all the time.

Q. (By the Court:) Did he fail to correct them?

A. Very generally he did.

Q. (By the Court:) What reason did he give for not responding to your demand—for not complying with your demands?

A. He made all kinds of excuses. Sometimes saying the Foreman would not do this, and that, and the other.

Q. (By the Court:) Did you ever order him to discontinue work unless he complied with the specifications?

A. No, because all the mats came up to the specifications of the mattress I had seen sunk in Savannah. I was continually trying to get them in better shape than any mattress I had seen in Savannah. I thought that it would be better to do that.

Q. (By the Court:) How many of these mattresses did Capt. Carter see put in the Jetty,—those which you considered defective?

A. I dont remember that. I remember that Capt. Carter inspected five mattresses that I know of; he saw them.

Q. (By the Court:) On Cumberland Sound?
A. On Cumberland Sound.
Q. (By the Court:) Were they all at one time, or at different inspections?
A. Different inspections.
Q. (By the Court:) How many different inspections?
208 A. I don't remember; it was three different inspections anyway.
Q. (By the Court:) At what intervals of time were those three inspections made?
A. I dont remember that.
Q. (By the Court:) Can you give about the date of any one inspection?
A. Yes, it was about July.
Q. (By the Court:) What year?
A. July, 1897.
Q. (By the Court:) Those five mattresses which Capt. Carter saw, how did they compare in quality with the first one with Capt. Gillette inspected after he took charge of the work?
A. One mattress I remember especially, Capt. Carter went out with the tow to see; he stood right by that mattress, and I was on the stone barge with him, and the contractors had everything hooked up and sank this mattress, and he saw it very well I think,—on top and all sides, and that mattress was a little worse, I think, than the mattress Capt. Gillette saw, because I inspected that myself very carefully. I also inspected the mattress that Capt. Gillette inspected.
Q. (By the Court:) Now, from your answer to my question, tell me about what proportion of brush that mattress he saw contained relatively to the amount it should have contained to make a mattress like that called for by the specifications?
A. The proportion would be about four-ninths; one-third to four-ninths, somewhere along there.
Q. (By the Court:) Do you know the price that was paid per square yard for that mattress?
A. I do not remember now.
209 Q. (By the Court:) Was it sunk as a single-course mattress?
A. No; it was sunk as an eight-course mattress.
Q. (By the Court:) What was the length and breadth of this mattress of eight courses?
A. One hundred feet broad; there were four courses, one

hundred feet broad and fifty feet wide, and on top of those four courses there were four more courses eighty feet broad and fifty feet wide.

Q. (By the Court:) Eighty feet long, you mean?

A. The mattresses were generally sunk perpendicular to the axis of the Jetty.

Q. (By the Court:) The lower courses were one hundred feet long and fifty feet wide?

A. Yes, sir.

Q. (By the Court:) Now, what was the width of the upper?

A. Eighty feet by fifty feet.

Q. (By the Court:) Did the upper courses project over the lower ones?

A. No, sir; they were eighty feet: The lower ones were one hundred feet.

Q. (By the Court:) You said the lower ones were one hundred feet long and fifty feet wide: Now, how wide were the upper courses?

A. The upper courses were eighty feet wide and fifty feet long.

Q. (By the Court:) Then, the width in one case was greater than the width in the other. Were the sides of this eight-course mattress vertical from top to bottom, the whole eight courses?

A. They were fifty feet in length. (Here the witness, with his hands illustrated to the Court the position of the mat as it laid upon the Jetty.)

Q. (By the Court:) Which way was the axis of the Jetty?

210 A. (In answer to the above question, the witness described and illustrated with his hands the direction of the axis of the Jetty, and how the mats were placed on the Jetty.)

Q. (By the Court:) Across that axis how wide was the Jetty?

A. Across the Jetty was one hundred feet; that is, the mattress was one hundred feet wide; and then on top of that came four more courses eighty feet wide, and the ends of the mats were perpendicular, the whole eight courses.

Q. (By the Court:) Did you make all the measurements of the mattresses delivered by the contractor—did you personally supervise the measurements?

A. Not all of them.

Q. (By the Court:) What proportion?

A. That is hard for me to say: I measured one-third of them—something like that. I would not say how many. It was about that, roughly.

Q. (By the Court:) In your estimation, in your opinion what was the value or the cost of the mattress which was constructed under Capt. Gillette's orders? You estimated the cost of the other?

A. Yes, sir: I intended to estimate the cost of Capt. Gillette's mattress, but never did; I was taken sick, and never made any estimate on that. In saying that I measured one-third, I meant to say that I checked a great many. The Inspector measured all the mattresses, and he measured all the material,—the Inspector on the works. He measured all the material, both the stone and the mattresses. Occasionally I would take the tow out to sea and sink the mattress personally, and leave him inside. When I say I measured one-third, I checked one-third.

Q. (By the Court:) He is the party who reported the 211 measurements to Capt. Carter?

A. His measurements were the official measurements, put in the books of the office, and those measurements I adopted in my reports and submitted those reports to Capt. Carter.

The Judge-Advocate: I move that we adjourn to meet in Savannah, Thursday, at 11:00 o'clock. My time was fully occupied yesterday in examining papers, and I had no opportunity to confer with witnesses whom I wished to examine, and I desire time for that purpose.

The President: You have all heard the motion to adjourn to meet in Savannah on Thursday, at 11:00 o'clock a. m. There being no objection, the Court stands adjourned, to meet in Savannah, on Thursday morning, January 20th, at 11:00 o'clock a. m. (At 2:48 o'clock p. m. the Court adjourned.)

THOMAS F. BARR
Col. & Asst. Judge Adv. Genl.
Judge Advocate.

212 United States Court Room,
Savannah, Georgia.
January 20, 1898.

The Court met pursuant to adjournment, at 11 o'clock, A. M.

Present:

All the members of the Court and the Judge-Advocate:

The accused, his counsel, and the Reporter, G. T. Cann, were also present.

Mr. Blair: May it please the Court, the accused desires to know from the Judge-Advocate to-day whether or not a certain chart which we have requested a number of times leave to inspect, will be delivered, or the accused will be permitted to examine to-day, and if not, we desire to make a statement and a motion to the Court in regard thereto.

Judge-Advocate: It will. I anticipated that action and I was about to tell you this morning it was open to inspection, and I was about to say to counsel before the adjourment of Court, that the chart is now open to inspection, the inspection of the accused and his counsel. I have myself had only one opportunity to look at it. It has been recently completed. It involved a great deal of labor.

Judge-Advocate: The Court will remember the testimony of Mr. Twiggs given in Augusta, in which he testified as to the accuracy of certain reports made by him, which I now have and will submit in evidence. First; is the report, dated Fernandina, Florida, August 5, 1897, by Marion Twiggs, Assistant Engineer, submitting measurements, taken, showing heights (average) width and number of cubic yards of stone and mattresses placed in the Cumberland Sound jetty under contract of October 8, 1896, under contract of the Atlantic Contracting Company. A copy of this report will be attached to the record and marked Exhibit No. 8.

The President: It will be received.

Judge-Advocate: The second report is dated Fernandina,
Florida, August 12, 1897, Marion Twiggs, Assistant-En-
213 gineer, submits report of measurement of building and displacement of jetty 3742, carrying old style and new style of mat; showing weights and estimates of mattresses placed in works, July 6, to 31, 1897. A copy of this report will be attached to the record and marked Exhibit No. 9.

Judge-Advocate: The third report is dated, Fernandina, Florida, August 25, 1897, Marion Twiggs, Assistant Engineer; Stone furnished by the Atlantic Contracting Company,

Design 1 of the specifications of the contract for construction. This will be attached to the record and marked Exhibit No. 10.

ARTHUR S. COOPER, a witness for the prosecution, having been duly sworn, testified as follows:

Direct Examination.

Questions by the Judge-Advocate.

Q. Please state your name, Mr. Cooper, in full to the Court.

A. Arthur S. Cooper.

Q. Place of residence?

A. Savannah, Georgia.

Q. What is your profession?

A. Civil engineer.

Q. Where are you employed?

A. In the Savannah District, United States District, Savannah.

Q. How long have you been so employed?

A. I have been employed in the district off and on for 13 years, not continuously, but at different times for 13 years.

Q. How long, consecutively, since your last return up to now?

A. About four years and a half.

Q. What have been your duties?

A. I have served as Assistant Engineer, mainly in the field, in charge of construction.

Q. What has been your principal field of labor?

A. In Savannah Harbor?

Q. And inform the Court, please, just what the nature 214 of your duties were in the field work?

A. It was partly surveying and construction of training walls, spur dams, and all work of construction of the harbor, dredging also.

Q. Work being done under contract?

A. Contract work mainly.

Q. Who was the officer in charge when you came here last?

A. Captain Carter.

Q. The accused here, present?

A. Yes, sir.

Q. Please inform the court what you know of the character of the mattresses which have been placed in Savannah Harbor under the contract of the Atlantic Contracting Company of 1896.

A. Its been brush mattresses, mattresses constructed of brush and poles.

Q. Describe them.

A. Describe the brush?

Q. The mattresses.

A. There have been several styles put in the body of the work, however, as constructed, all mattresses were what is known as the third design mats, these mats consist of a grillage of poles on the bottom, spaced 8 feet apart both ways, being longitudinally and crosswise. On top of this grillage of poles rests a solid grillage of brush, bundles of brush, on top of this grillage of bundles of brush there is another grillage of poles; the top grillage being wired to the bottom grillage by wires leading clear through from the lower grillage to the top grillage. By grillage, I mean a double tier of poles, a tier running lengthwise and a tier running crosswise.

Q. At the top and bottom?

A. At the top and bottom.

Q. Have you described the character of the mattresses sunk under the contract?

215 A. I don't know that I understand exactly what you mean.

Q. The actual mattresses that you saw, actually sunk under this contract of 1896; does that description apply to these?

A. Yes, sir.

Q. Does that description apply to the third design of the specifications, mentioned in the contract?

A. Well, no. In the third design it said "fascine", and these mats were constructed of bundles of brush.

Q. Was the mattress you saw; how many courses of the mattresses?

A. They varied all the way from one course up to ten. Ten is the highest that has ever been sunk at one time.

Q. What would be the height of a ten course mattress?

A. This particular mat, ten course mat, was 15 feet high. I don't think but one of that height was ever sunk.

Q. What would be the height of a three course mattress?

A. A three course mattress would be four and a half or

five feet, of that style of construction;—that is, the style just described.

Q. Was the brush used? This is the contract of '96 I am speaking about.

A. Well, that would apply to the contract of '96 or of '92.

Q. I am referring solely to the contract of '96 now.

A. Ninety-Six, yes, sir.

Q. Now, were the mattresses sunk under this contract in Savannah Harbor, constructed in compliance with the requirements of the third type, mentioned in the specifications?

A. Not entirely; not entirely. The bundles of brush, as I said, before, were substituted for fascines, and in some instances all the poles were not put in. The top grillages sometimes would consist of a single tier to a course, while grillarges mean double tiers.

Q. That is, top and bottom of each mattress?

A. Yes, sir; a double grillage was always the first.

Q. Was the brush trimmed?

A. No, sir; it was not.

216 Q. You inspected those mattresses as they were placed in position?

A. Either myself, or some of the inspectors working under my orders.

Q. You saw a good many of them, did you, go into place?

A. I saw nearly all of them go in.

Q. Did you see any mattresses go into place which filled the requirement of the third design under contract?

A. I did not see any that would fill the requirements of those specifications.

Q. You had the specifications before you?

A. Yes, sir.

Q. Had you any instructions as to what character of mattresses you should accept?

A. When I returned to the service in 1893 I was taken down on the works and shown what was going on, shown the style of construction, when I returned to the service in 1893 I was sent down the river and shown the style of mattresses at that time being constructed in the harbor. This style of construction was given to me as satisfactory to Captain Carter, and I was told that I was to carry on the work in the manner that I found it being carried on; in other words, to carry it to that standard, that style of construction, that style of construction that I found being used was the standard I

was to employ during my work. That, of course, was not a fascine, it was not a fascine according to the specifications, but I was told that that style of construction was satisfactory, and was what was wanted, I therefore carried out my instructions.

Q. Then those mattresses which you have seen sunk under the contract of 1896 in the Savannah Harbor were of the same character as those which had been previously shown you as acceptable to the accused?

A. Yes, sir, the same style of construction, and about the same height for each course, and were therefore satisfactory to the officer in charge.

217 Q. Were any instructions given you, in any degree varying from those original instructions, at any subsequent time?

A. Yes; to a certain extent varying the height required for each course.

Q. Please state what those instructions were.

A. I was given by Capt. Carter a list of the heights that would be required when multiple mats were put in; that is, mats made one on top of the other; being as high as ten courses at a time. I was given a list that each of these mattresses would have to have, in order to be entitled to the number of courses mentioned in that list, and that list was my guide for the entire construction of the entire work of the contract.

Q. Those instructions were then, as to the number of courses?

A. No; not the number of courses; but of the height of the mattresses would have, when the number of courses were given. The number of courses was specified by myself and the orders were issued to the contractor to build a certain number of courses, I knowing how high they would have to be, if there were that many courses.

Q. Have you any memoranda of those instructions?

A. I have; Capt. Carter gave me a pencil memoranda; I carried that in my field book until it was worn out. It was about to fall to pieces, and then I made a copy of it in one of my field books, but the original I have not got.

Q. You have not got the original?

A. No, sir.

Q. What have you done with it?

A. It was worn out, falling to pieces, and I threw it away.

Q. You threw the remnants away?

A. Yes, sir.
Q. You are sure it was been destroyed?
A. Yes, sir.
Q. Have you a copy with you?
218 A. Yes, sir; I have a copy with me; it was copied in the back of one of the field books, used in the construction of the Cockspur Island training wall, or in the front, however.
Q. Please read and explain those instructions.
A. "The first course will be 2 feet in height; that means a single course mat must have a height of two feet, that is, an average height of 2 feet, by taking several measurements; 6 or 7 measurements all over the mat, and the mean must be 2 feet. Second course mat, 3-1/2 feet: Fourth course mat, 5 feet: A Five course mat, 7-1/2 feet; A six course mat, 9 feet; A seven course mat, 10 feet; An eight course mat, 12 feet." The list was not carried any further than that, because it was not contemplated to build mats much higher than 12 feet, only in isolated cases.
Q. What was to be the height of a 10 course mat?
A. That is not given in this list; an 8 course mat is the highest given.
Q. What is the height of the 8 course mat?
A. 12 feet; that is the average of a foot and a half per course.
Q. And what the two course mats?
A. Three and a half feet. That has been the basis of the entire work under the '92 contract, and has also continued to be the basis of the '96 contract.
Q. That is the basis upon which computation for payment has to be made?
A. No, sir; not exactly; practically, but that's not meant so.
Q. Were computations for payment to be made on that?
A. Well, yes; but I will have to explain what that means. Suppose a mat was delivered to be one of seven courses; this table says it must be 10 feet high. Suppose that mat was only 9 feet high, instead of being allowed for a 7 course mat, they would only be allowed for a six course mat.
Q. Then it was the basis of computation.
A. Basis of computation, yes, in that way.
219 Q. Can you estimate the cost per square yard of the mattresses that you saw go in?

A. I have made an estimate, you mean as put in the works?
Q. As when sunk?
A. The specification mats as put in the works?
Q. As put in the works, I ask you what was the value of a square yard?
A. I have computed it to be 9 cents. That is the cost as placed in the works.
Q. How do you arrive at that conclusion?
A. I have gone over the details of the construction, and the cost for 2000 yards of mat, dividing the entire cost by 2000 gives the mean per square yard.
Q. I understand that the mattresses of different courses that an allowance was made the contractor per square yard of surface to each course?
A. The surface of each course? Yes. The same as if they had been placed in the works singly.
Q. Now please state to the court how you arrive at the value which you have placed upon these mattresses when sunk.
A. Well, I would have to go through the details of the estimate then.
Q. Please go through them.
A. I have estimated in the mat camp for two foremen $10, one time keeper $2—this is on a basis of 2 days work—2 days work at the camp for building one mat, 75 men at a day and a half would be $84.25 for the labor and then the feed for 7 teams for two days $10, the wire and rope $5, cost of establishing camp, I mean by that the expenses of looking up the camp and building the quarters for the men and for the mules and expenses of that kind, divided among each mat, would mean about $3 to every mat. There would be, say 150 mats, which would be $3 a mat, a mat, which would make quite heavy expenses for establishing one camp. I said 150, I will correct that by saying 50, which is as much as you can get in one place.
Mr. Charlton: I didn't catch that, $3 for every man?
A. For every mat, then the privilege for cutting the brush per mat—brush and poles would be $5, and general super-
220 intendents $10, office rent and clerical hire for half a day, I estimate a half a day because I have computed 2 mats to be placed in the works for one day. I have estimated for a large plant on the work so as to go on very rapidly, that is $2, loss and interest on the plant for half a day $15, a cost of securing the contract $1 per mat, I mean by that what it would

cost them put down, loading and expenses of that kind, the towing of the mat to the river camp $15, for the cost of sinking I estimate 20 men at the river camp would be $15, one tug boat, one engineer at $20, one fireman $5, time-keeper $1, provision 2 days, that is, $43, for the cost of sinking the mats, 2 a day, $21.50—the cost of sinking each mat, making $183.75, the total cost of completing and putting in place for 2000 yard mats. I have here the cost of the plant.

Q. Wait one moment, you speak of the daily interest on the cost of the plant. Please explain that.

A. I am going to do that in this item. The item of the plant shows one tugboat $8,000, 3 tug boats $5,000, 4 gin barges $6,000, 2 gin barges, $2,000, 4 stone barges $4,000, 2 brush barges $1,000, one pile driver $1,500, one quarterboat $500, 10 anchors $500, 4 row boats $150, 20 mules $2,000, stoves, dishes, and-so-forth $200, cord, chains, and-so-forth $300, tools $500, making a total $32,450.

Q. How much?

A. $32,450. For the entire plant, and I have made an estimate that that plant is worth $10,000 upon completion of the work, a total loss on account of the plant of $22,450, and I have added interest to take and divide up among the number of days that we work for the whole three years and makes $30 a day for interest and loss upon the plant. For the operation of the tugboats I have estimated for one captain $100 a month, one engineer $100 a month, one foreman $30, cook $25, deck-hand $25, coal $90, provisions $60, repairs, that, is general repairs, $75, making a total of $500 a month for operating expenses of their best tugs, which would be $20
221 a day a working day. Then the cheaper tugs, the tugs that towed the mats from the brush camps to the river camp, those are the cheaper construction tugs and cheaper men on them, one captain $70 a month, one engineer $70 a month, one fireman $30, one cook $20, one deck hand $20, provisions $50, coal $75, repairs $50, making a total cost of operating the cheaper tugs $385 a month, or $15 a day, and these items are put into the others by the day.

Q. In stating the value of the plant, do you mean that the plant, like it could be put in place now, or do you attach a present value, or a value at the time you were there?

A. I put what I thought was the value of the plant when it was first put in operation, not the present value. The present value I put down at one third of that.

Q. I am not speaking of the present value, but whether it could be replaced by new material?

A. Well, it could be, except the tug boats, the tug boats you could not replace them for that money.

Q. Do you know anything about the age of the boats?

A. Yes, sir, they were all old boats except one, that one I placed at $8,000. You could buy a new boat, or a boat nearly new for that money.

Q. How long have you known the boats?

A. Since '84. The first one of them since '84, and the others since '93.

Q. Where have you known them?

A. Savannah Harbor.

Q. They have been in Savannah Harbor all that time?

A. Yes, sir, that is from the dates mentioned, '84 and '93.

Q. Then the age of the boats have entered into your calculation as to their value as a present plant?

A. According to the best of my judgment, yes, sir.

Q. Have you seen any mattresses constructed in ac-
222 cordance with The requirements of the third design under the existing contract?

A. I saw one place in the breakwater in 1897, which were in the exact accordance with the third design as described by the specifications.

Q. Under whose orders were they sunk?

A. Under the orders of Captain Gillette.

Q. On what date was that mattress sunk?

A. It was in August some time, I can refer to my notes here and give you the exact date, do you wish it?

Q. Well, about what time?

A. About the latter part of August, I think.

Q. Did you see it go in place?

A. I was present, yes, sir. I was on the breakwater when it was sunk.

Q. Did you examine that mattress carefully?

A. I did, yes, sir.

Q. It was in exact compliance with the requirements?

A. Yes, sir. It was in exact compliance with the requirements according to the contract and specifications, as I understand it. Yes, sir.

Q. That was a third type of mattress?

A. The third design, yes, sir.

Q. Did you make an estimate of the cost of constructing and sinking in place that mattress.

A. I did.

Q. What was the estimate placed upon it per square yard?

A. 40 cents.

Q. How did you arrive at that conclusion?

A. In the same manner as before. I went through the details of construction, first assuming the mat to be 100 by 55 feet, which would mean 555 and 55/100 square yards. Shall I go through the details?

Q. Yes, please. I would like to have that upon the record specically.

A. In the construction of the mat I have estimated 2 223 foremen, 2 days, that would be $12; 50 men, 2 days, at $1 a day, would be $100; the privilege of cutting brush and poles, $5; cooking and provisions, for 2 days, $4; cost of establishing camp per mat, $3; general superintendence, $7; wire and rope, $10; office rent and clerk hire, $4.50; loss and interest on the plant, $20.50; cost of securing the contract, $1; towing from the river camp, $15; and sinking as before, $43; making, $225; and as there are only 555 yards, that would mean 40 cents per square yard. Now, do you want to go through the details of the plant, with that too?

Q. No; that's sufficient.

A. I just estimate the loss and interest on the plant at $20.50 a day.

Q. I think that's sufficient upon that point. Do you recognize those bundles on the platform, Mr. Cooper?

A. Yes, sir.

Q. What are they?

A. They are bundles of brush that were brought to the Engineer Office by the inspectors, Mr. Keating and Mr. Austin and Mr. Hale, and they were brought from two different camps.

Q. Only what you know; I simply want to take you from the time you saw them for the first time.

A. I saw them at the Engineer's office. They were brought there by the men I speak of.

Q. Those are the identical bundles?

A. I would have to look at them before I identified them.

Q. Please look at them and identify them.

(Here witness examines the bundles.)

A. Those are the same bundles that were stored at the Engineer office; three of which were obtained—

Q. State simply what you know. Do you know where they were obtained?

A. I do know that three of them were obtained on Tybee Beach, by myself and Mr. Hale.

224 Q. Are those that were obtained by you Mr. Cooper, separated from the others there?

A. One of them that is in the center was obtained by me.

Q. How about that top one there?

A. I had nothing to do with obtaining that. That was obtained from one of the brush men, I had nothing to do with the bottom one.

Q. How is this one in front?

A. That was obtained from one of the brush camps. The center one of the three.

Q. That center one, but low down on the platform?

A. Yes, sir, but low down.

Q. That is the third course, not in sight of the court?

A. No, sir.

Q. Have you seen bundles of the character of those you just examined, and you testified to having first seen in the Engineer's office, used in the construction of the mattresses under the existing contracts?

A. I have.

Q. How do those compare as to the distance at which they were tied together with those you have seen used in the construction?

A. About the same, some of them were a little closer and the others not so close.

Q. As to compression, some were closer and some not so close.

A. Yes, sir.

Q. I am referring to that upper one to the rear?

A. That's about the same as to compression, and of the same materal as used in the work. Of course, they would look a little different coming fresh from the camp because they had all the leaves on, but, as a matter of fact there would be about the same material there, that is, material of any value.

Q. Those found by yourself, I understood, were on the shore, were down on the shore on Tybee Island.

A. On the beach at Tybee Usland, washed on shore by the waves, presumably they came from te breakwater, of course, I do not know that.

Q. You know the character of the mattresses that were put in the breakwater?

A. Yes, sir.

Q. Mattresses of that character were put there?
225 A. Yes, sir.
Q. Were there many of them on the beach?
A. Many bundles of brush?
Q. Yes.
A. I judge, taking all, on the beack to have made up two or three mats.
Q. Holding together?
A. No, they were all loose bundles, and some of the brush was loose, I mean entirely separated.
Q. I mean the bundles of brush held together as bundles?
A. No sir, the majority of them were not as bundles, they were simply as loose brush, the ropes having parted and the brush scattered all over the beach.
Q. In stating that the brush you saw on the beach on Tybee Island would make three mattresses, do you mean three single mattresses or three course mats.
A. Three course mats, that would be 9 single mats.
Q. Have you ever visited a mattress camp where the bundles were being made?
A. I have been in mat camps occasionally, not very much.
Q. Was that called a mattress camp where they were constructed, or where they were assembled?
A. It was called a mat camp where they were built.
Q. Where the bundles were assembled, used in the construction of mattresses was a mattress camp?
A. A mattress camp, yes, sir.
Q. Was an inspector kept at that camp?
A. No, sir, occasionally an inspector would be sent there.
Q. By whom?
A. By Captain Carter.
Q. How often?
A. I dont remember of their having been sent there more than three or four times. There might be more, that is all I remember.
226 Q. For how long a period would they remain there?
A. 2 months at a time, some times only one month.
Q. Who were they?
A. Mr. Hale was one of them, S. M. Hale, E. J. Keating, and I. Stanton Carter.
Q. Was Captain Carter present at any time when you were present, when those mattresses were sunk in place?
A. Quite frequently, yes, sir.
Q. Did he make any criticism upon them—state any objections?

A. Not that I remember, I dont remember of any objections being made, the mattresses seemed to be satisfactory in all cases.

Q. What character of stone was used in the stone work under the existing contract?

A. There has been all grades of stone. There has been piles of rock from New York and piles of rock stored up from foreign vessels coming into port and Florida rock.

Q. What rock principally?

A. In the last two contracts it has been, mainly Florida rock. Previously to that it has been mainly New York Rock.

Q. Do you know where this rock was obtained?

A. Not exactly, no, sir. I know that it came over the S. F. & W. Railway and was delivered to the contractors here at the S. F. & W. Wharves on lighters. Exactly where it came from I could not say, I do not know. It has always been known as Florida rock, and that is all I know about it.

Q. Did the Florida rock furnished and sunk by the contractors comply with the requirements and specifications in the contract?

A. It did not.

Q. In what did it vary?

A. In specific gravity, and in hardness. The specification says it shall be as hard as hard burned brick and only about one third of it would come up to that requirement.

Q. Was any of it rejected because it did not come up
227 to that requirement?

A. It was not.

Q. You saw this stone go into place?

A. Yes, sir.

Q. In what respect did it vary from the requirements of the contracts as to specific gravity?

A. It was very much less. It would vary. The average specific gravity from 100 to 200 samples tested, was probably less than 2—1.96, as I remember it, and the specifications called for 2.4. I

Q. I hand you two samples of rock, what are they?

A. It is lime stone, known as Florida rock.

Q. Have you seen those specimens before?

A. Those two specimens were taken from a lighter load of rock which went into the works on September 8, 1897.

Q. Taken by whom.

A. They were selected from the barge by T. J. Daniels.

Q. In your presence?

A. No, not in my presence.

Q. How do you know that they were selected from that barge?

A. Simply that he brought the samples to me to be tested.

Q. Where?

A. On tybee Island, they were brought into my office on Tybee Island by T. J. Daniel. The employee on that barge on that work.

Q. Is there any stone of that character to be found on Tybee Island, unless brought there?

A. No, sir.

Q. You say that you made a test of those specimens for specific gravity?

A. I have. This one has a specific gravity os 1.3, a soft one, and this one has a specific gravity of 2.6.

Q. The difference between those two specimens seems to be very great, are they at the extremes of such Florida stone as you know?

A. Those are the two extremes. That is probably the 228 lightest one ever presented to the office to be tested, and this is among the heaviest and they vary all the way between that grade—all the way up from this light one to this heavy one.

Q. That, then, is the very poorest that could be found?

A. The very poorest that could be found.

Q. And that the very best that could be found?

A. The very best, the two extremes.

Q. Have you seen stone of the character of each of those specimens go into the works, or how nearly similar have you seen it?

A. I have seen stone of that character go into the works.

Q. In what proportion?

A. Well, there would very few as bad as this sample presented, but there would be a good many that would have a specific gravity of say of 1.7 or 1.6, a good many would range along there, it would be very rare case that would average 1.3, that was a rare case, and that was selected because this was above the average, one below the average and one above the average and take the mean and you would get the average of that barge.

Q. It would be very rare that a specimen of either extreme would be found in that stone?

A. Very seldom, the inspectors would inspect in that manner, that we speak of. They would select these samples from each lighter, that is those samples that would represent in

his judgment the average of the weight on that lighter. In selecting those samples that practically decided the weight of the weight of the lighter because a great deal depends on his judgement in picking out rock that would represent the average of the lighter, so that the men that selected the samples determine what was going to be the specific gravity of the lighter.

Q. How do you determine the specific gravity of these specimens?

A. By soaking the samples for a day or more in water so that they would become thoroughtly saturated, then weighing them while wet, and then putting them into a bucket
229 with a spout to it, but before they were put in the bucket water was put in so it would just run out, when the water would cease to run out the bucket a pan was placed under the spout and the rock placed in the bucket, the actual amount of water displaced by the rock ran into this pan, and in that way gave the actual amount of the water displaced by the stone then the weight of the stone was determined by the weight of the water displaced, then the weight of the stone was divided by the weight of the water displaced and that would give the ratio of the weight of the water which would be the specific gravity. Specific gravity means comparison with that of water.

Q. Do you recognize that (handing witness a photograph)?

A. This picture that I hold in my hand is a photograph of one of the mats ordered constructed by Captain Gillette.

Q. This is a copy of or a duplicate of Exhibit 6, do you recognize that photograph?

A. Yes, sir.

Q. What is it?

A. It is a photograph of a mat completed according to the third design of the specification of the contract with the United States.

Q. That is the mattress in regard to which you gave testimony?

A. Yes, sir.

Judge-Advocate: I show the witness now a photograph or the duplicate of the one that is in evidebce before the court and know as Exhibit No. 4.

Q. Have you ever seen a mattress like that?

A. Not exactly like that, that I believe is a mattress from Cumberland Sound. I never saw one exactly that shape. No, sir, we did not use them of that shape on Savannah Harbor.

Q. In what does it vary?

A. In that there is only two lengths of mats. I dont know how many courses, quite a number of courses of a certain width, and quite a number of another width. On the Savannah Harbor we would step up gradually instead of stepping up like this.

Q. As to the brush shown in the photograph, I judge 230 that to be the same style of construction used on Savannah Harbor. Now, Mr. Cooper, we will return to the subject of the construction of the mattresses. I want you to describe fully to the Court how those bundles were made, how they differed from the fascines called for by the third design.

A. The fascines called for by the third design contemplated a solid fascine with all the leaves and twigs trimmed off and choked hard at intervals of 2 feet, and it also contemplated that those fascines shall be the full width of the mat, 100 feet by 40 feet, or whatever width the mat is. They were to run crosswise to the dam of the fascines and be the full width of the dam, and in the mattresses going into the construction of the Savannah Harbor this was not done, it was a bundle of brush used, brush not trimmed and lightly choked and made about 15 feet long placed one after another until they go the full width of the mat, that was the main difference between the fascine as specified and the fascines as used. Is that what you want?

Q. That's what I want. Were the bundles of brush as well and firmly made and braced as tightly and closely as they could be?

A. Under the specifications?

Q. No, as a fact?

A. I think they were not.

Q. As they could be, I am speaking in binding bundles of brush in as fascines.

A. I answered that they were not.

Q. Were the inspectors habitually kept at the mattress camp?

A. Very seldom, very seldom.

Q. Then when the mattresses reached the point at which they were to be used, their internal construction could not be judged by the engineer, who witnessed their being put in place?

A. About these large mats, it was impossible to tell exactly what was inside of them because some of them, the main bulk

of them, were 10 feet high, that was the most common mat
231 put in place, the 10 foot mat. A mat would be 100 feet in one direction and 25 feet on top, and 40 at the bottom, you could not see the entire mat, you could not see the inside of it, you could not tell what it was made out of.

Q. Did you make any effort to ascertain the interior construction?

A. In some instances I used a sounding pole, shoving the pole down into the mat or through it where possible, in some instances I have been down in the mats.

Q. Do you mean down in them after they were prepared to be sunk?

A. Yes, sir.

Q. How did you get in?

A. Simply pushed the top bundles aside and worked my way down into it.

Q. How often did you do that?

A. I don't remember doing that but twice.

Q. How much space could you find void?

A. Well, in some instances, as large as that desk (pointing).

Q. Where I sit?

A. Yes.

Q. You testified that Mr. Hale had been an inspector at the mattress camp, do you recollect when it was he was an inspector there?

A. When Captain Gillette took charge he sent me down word there was no tidal inspection. He sent me word I was to carry out the specifications as printed, that was the order I got. I told Captain Gillette that would be impossible without giving me an inspector at the mat camp and I think he asked me to recommend somebody.

Mr. Charlton: We dont want all that conversation between him and Captain Gillette.

Judge-Advocate: I simply want to know about Hr. Hale at the Mattress camp.

Witness: I was telling how he was appointed.

Q. Never mind how he was appointed, I simply want to know if he was there?

A. He was there.

232 Q. That was under Captain Gillette?

A. Yes, sir.

Q. Was he there at any other time?

A. No, sir.

Q. How long were the other inspectors you mentioned as at the mattress camp on duty at the camp? and when?

A. I think Mr. Keating was on duty about three months in 1894.

Q. How long was he on duty under the existing contract?

A. He was not on duty under the existing contract; not in the mat camp.

Q. Who was on duty under the existing contract?

A. Mr. Hale. You mean in the mat camp, do you not, you mean the mat camp?

Q. In the mattress camp, yes?

A. Mr. Hale.

Q. Was that subsequent to or prior to the assignment of Captain Gillette here?

A. That was subsequent to his assignment.

Q. Who was assigned to duty by Captain Carter at the mattress camp, if any one, under the present contract?

A. Under the present contract, the '96 contract?

Q. Yes.

A. There was nobody there, no inspector at all.

Q. Then the testimony in relation to inspectors of the mattresses to the camp there that you gave covered quite an extended period of time?

A. They covered the '92 contract.

Q. Mr. Cooper, did you ever call the attention of the accused to any failure on the part of the contractors under existing contract to comply with the requirements?

A. I made a written report in March, 1897, in regard to the placing of rock on the mattresses.

Mr. Charlton: The writing, if there was any, would speak for itself.

233 Q. I asked you if you made any report.

A. I just stated that I made a report in March, 1897, in regard to the placing of rock on the mattresses.

Q. Was that report in writing?

A. In writing, yes.

Q. To whom did you make it, to Captain Carter?

A. Captain Carter.

Q. Have you the report with you?

A. I have not.

Q. A copy of it?

A. No, sir, it is in the office.

Q. Did you, at any time, find that the contractors were not furnishing the material they were required to furnish?

A. They were not placing as much stone on the mats as I was told to put on by Captain Carter, I called Captain Carter's attention to that.

Counsel for the accused: We must object Colonel, if that's in writing.

Judge-Advocate: That report is in your office, I presume we will get the report. You made the report in writing?

A. In writing, some time in March, I cant tell exactly the date, some time in March.

Here the court at 12.20 o'clock p. m., takes a recess of 10 minutes to allow the prosecution time to send to the engineer's office for the above report.

234 (Reported from this point by W. O. Tarver)

Court called to order and examination of witness resumed at 12:30 p. m.

Q. (The Judge Advocate continuing.) Is that the report to which you were testifying when the court took a recess?

A. That is the one, yes, sir.

Judge Advocate: I offer this report in evidence. I understand there is no objection on the part of the accused or his counsel. I will read it:—

"Tybee Island, Ga., Mch. 10, 1897.

Capt. O. M. Carter,
Corps of Eng. U. S. A.,
Savannah, Ga.

Sir:—

I have the honor to report that I have this day made a careful examination of the breakwater. There is no doubt of the fact that the mats that have been sunk have not sanded up in the least. At places where I was able to shove a pole through the mats, the hard sand bottom was exactly the same depth as it was, 100 feet outside of the dam; and also at the edges of the mat there has been no piling up of the sand as would naturally be expected. In fact, at some places there is actually a scour. It is therefore, evident that no sanding will take place. Or at least, not until the crest is brought up much higher, probably high enough to stop the ebb-flow entirely at low water. I would recommend that the present mat works be either stopped or slackened up, and what is already laid be covered over with sufficient rock to prevent the worms from destroying it. This should be done also on account of the danger of losing the mats already placed by the action of severe storms. There are two places that have al-

ready been considerably damaged, say, about 100 feet in length of the wall. I would further recommend that no mats be left with less than about 300 cu. yards of stone on them; and would give it as my opinion that about 150 to 200 cu. yards for each 100 feet in length should be put on the
235 old works as soon as possible.

Very respectfully,
Your obedient servant,
Ass't Eng."

This paper will be marked Exhibit, No. 10.

Q. What instructions did you receive from Capt. Carter in regard to that communication?

A. I received no written instructions, and do not remember of any oral instructions except some months later.

Q. Were your recommendations carried out?

A. No, sir; they were not.

Q. None of them?

A. No, sir.

Q. The recommendations made by you in the report just read, none of them you say, were carried out?

A. None of them were carried out, as far as I know.

Q. Did you have any conversation with the accused in regard to this report?

A. No change taking place in the amount of stone placed on the mat, some months after I noticed that the mats were still being badly damaged by storms, and I went to Capt. Carter and made a personal report, a personal statement to him in his office, requesting that orders be issued to require the contractors to place at least 200 yards on each mat, and to proceed at once with the placing of rock on the mattresses already sunk; stating to him that mattresses were being damaged by the storms. Capt. Carter dictated a letter, complying with that request to the contractors, but I do not know of any instances where that letter was carried out.

Q. You would have been aware of it if the instructions contained in that dictated letter had been carried out?

A. Yes, sir.

Q. You are sure they were not complied with?

A. According to the best of my knowledge, they were not.

236 Q. The same conditions existed then as subsequently?

A. The conditions were worse, because some of the mats were badly damaged after that letter had been written.

Q. You made no written report except the one to which you have testified?

A. Not in regard to the stone.

Q. What was your oral report to the Captain?

A. It was to the effect that the Breakwater was being badly damaged by storms, and that I feared the teredo would eat up all the brush if it was not covered and protected from the action of these marine worms.

Q. Was that all of your report?

A. That is the substance of the verbal report I made to Capt. Carter. I do not remember the date; it was some months after the letter was written.

Cross-Examination by Mr. Charlton.

Q. You do not know where that rock (Sample of rock handed witness) came from, do you?

A. Not of my own knowledge except as I have stated.

Q. That is from information received from others?

A. Yes, sir.

Q. Now that (Handing witness rock) one?

A. No.

Q. Will you be kind enough to state again how you obtained the specific gravity of these two pieces?

A. I took the samples and immersed them in water, and allowed them to remain in water at least twenty-four hours, sometimes three or four days; then I weighed each sample immediately after taking it out of the water. I immersed it in water, and carefully determined the amount of water displayed by that stone, and then I divided the weight of the stone by the weight of the water displaced.

237 Q. The weight of the stone after it was taken out of the water by the weight of the water it displaced?

A. Yes, sir.

Q. You immersed it in what sort of receptable?

A. Do you mean before the test or in order to get the displacement?

Q. When you got the displacement.

A. It was artesian water.

Q. What kind of a vessel?

A. A tin vessel with a spout to it.

Q. That was placed on what?

A. That was placed on a table.

Q. How did you catch the displacement?

A. Through the spout. I poured the water in a bucket and let it run until the water stopped, then when the water stopped I placed a basin under the spout and then placed the rock in the water,—placed the basin under the bucket, and all the water caught in that basin would be the amount displaced.

Q. Suppose you had to get the specific gravity of granite, would you apply the same test that you did to this rock here?

A. Yes, sir.

Q. Suppose there had been put into these works a series of iron tubes two feet long, hermetically sealed, and nine inches in diameter, with a thickness of say, of 1/8 of an inch, how would you obtain the specific gravity of that iron?

A. I would not have to obtain it, I would know it.

Q. Suppose you did not know it, but wanted to find out the specific gravity for a new purpose, how would you find it out?

A. I would determine that by the displacement of the water.

Q. Tell us how?

A. The same way.

Q. You would immerse that iron in water for 24 hours?

A. That would not be necessary because iron is not porous.

Q. Tell us how you would do it.

A. I would first have to break this seal so that the
238 water would go into the inside of the iron,—break that seal so that the amount of water displaced would be the actual bulk of the iron. I am not after the specific gravity of the air in there, but the specific gravity of the ore.

Q. Then you would take it out from its immersion and weigh it in air?

A. Weigh it in air and divide that by the weight of the water displaced.

Q. That is the way you would get at that?

A. Yes, sir.

Q. You first came here in 1888?

A. In 1884.

Q. Had you ever had any experience with coast work at that time?

A. That was my first experience on tide water.

Q. You never had been to tide water before?

A. No, sir.

Q. And you never had seen a mattress before?
A. Never had.
Q. Nor a fascine?
A. Not that I know of. I may have seen some in some railroad work, but it didn't make any impresion on my mind. I didn't know much about it.
Q. You were in the employ of Capt. Carter whilst he was out West?
A. I was.
Q. In bringing you down here to the Atlantic coast to be put upon this work here, was he bringing you here for any experience you had had in this character of work or because of his confidence in you?
A. I suppose so.
Q. Both or which?
A. I suppose because he felt confident that I would be a faithful man to him.
Q. In other words, he relied upon you?
A. He did.
239 Q. When you came down here you had some trouble with the tide water, didn't you?
A. I didn't have any trouble with the tide water.
Q. Didn't you complain about the freshets in the river here worrying you twice a day?
A. No, sir.
Q. You never had seen tide water before?
A. No, sir.
Q. You never had seen this character of construction?
A. No.
Q. It gave you a great deal of trouble didn't it, or did you adapt yourself to it at once?
A. I think I did.
Q. Adapted yourself to it at once?
A. I think so.
Q. In your direct testimony I think I remember that you stated several times with emphasis that there were no fascines constructed in accordance with specifications until after Capt. Gillette came here?
A. That is my testimony, sir.
Q. But you had seen a military fascine before Capt. Gillette came here?
A. I had not.
Q. Do you consider the fascine put into Capt. Gillette's

mattress a military fascine?—If not, what kind of a fascine was it?

A. I think that would answer the description of a military fascine.

Q. In other words, it was the theory, or fact that all the leaves, twigs and branches were to be cut from this brush?

A. That was the idea.

Q. To have nothing but what?

A. To have nothing but straight branches that came up from the ground straight to the top.

Q. A cylindrical bundle of rods?

240 A. Poles or small brush.

Q. What do you mean by poles or small brush, was all the brush cut off?

A. Brush with all the branches cut off.

Q. It had been brush at one time?

A. Yes, sir.

Q. After you cut off the branches, twigs and leaves, have you any brush left?

A. I understand by definition of brush the entire substance, from the ground to the top.

Q. But as I understand you under the specifications, the third design contemplated the exclusion finally of all leaves, twigs and branches, so as to bring it down to a cylindrical bundle of rods or poles?

A. A smooth bundle of rods or poles.

Q. That is a simple collection of stems of the original brush?

A. Yes, sir, that is right.

Q. Therefore, strictly speaking, there is no brush in a fascine under the specifications?

A. Yes, sir, what is left of the brush after being trimmed; it is a part of the brush, of course.

Q. But all of the brush, in the common acceptation of the term, is gone, is it not?

A. The trimmed brush, as I said before, applies to the entire structure and this pole is a part of the brush.

Q. Therefore, these cylindrical rods or poles, when you get them into a mattress, you call them brush?

A. I do not understand you.

Q. I understand you to say that you cut off everything from this brush and get it into a fascine of smooth poles?

A. Yes, sir.

Q. Now, where does the brush come in, after you
241 cut off the twigs, leaves and branches?
A. It would not be called brush.
Q. Therefore that is purely a military fascine, as you understand it?
A. That is my understanding.
Q. And you never had seen a military fascine until after Capt. Gillette came here?
A. Not that I remember.
Q. Had you ever heard of such a thing as a brush fascine?
A. I have constructed a brush fascine.
Q. Where?
A. I don't remember.
Q. You never heard of its being used in this locality?
A. I think so.
Q. These that were constructed under the directions of Capt. Carter, what were they called?
A. Bundles of brush.
Q. Where did you get that expression from? It is one that Capt. Gillette used very frequently in his testimony.
A. Simply from the meaning of the word. A bundle is something bundled together and brush is what it is made of.
Q. Did you ever use that expression before Capt. Gillette came here in describing the fascines constructed under the administration of Capt. Carter?
A. I have.
Q. Where?
A. In talking of the work with the men.
Q. Do you find any such description in the specifications?
A. No, sir, I did not.
Q. Is there any of your reports which contain any such expression?
A. Most all of my measurements of the brush have the word "brush" written over the top. I don't say bundles of brush, but on nearly all my measurements of brush,—that is those I measured myself,—those reports I made myself,—
242 you will find Over the report the word "brush" with a mark underneath it.
Q. That you meant to indicate what?
A. Meant to indicate that the material in that report was a bundle of brush.
Q. Then what did you consider brush under these reports?
A. Those bundles.

Q. With what on?

A. Branches and stems and leaves just as it was cut in the woods.

Q. And you considered that a brush fascine, or a simple bundle of brush?

A. A bundle of brush.

Q. I want to know whether you reported those bundles of brush as fascines?

A. I don't think I ever reported them as fascines.

Q. Although at that time the only fascine you had ever heard of or knew of, was the so-called brush fascines in this work here?

A. Well, the word brush fascine is a combination I don't know that I know how you mean to apply it.

Q. Have you never heard of a brush fascine?

A. I have heard the term used, but want to know how you mean to apply the term.

Q. What you call a bundle of brush or bundle of live brush, well trimmed and choked at several intervals?

A. That would be a fascine.

Q. What do you consider the "well trimmed" to mean?

A. That it is simply that it should be well trimmed.

Q. What do you understand by that?

A. I would understand by "well trimmed" that all the branches and leaves should be cut off.

Q. Everything cut off to the rods or to a military fascine?

A. A military fascine.

Q. You say that you yourself recovered some of these bundles of brush there from Tybee beach?

243 A. Yes, sir.

Q. And that there was enough on the beach to make how many mattresses?

A. I estimated roughly enough to make about three of the style of mattresses going into the works at that time.

Q. Single course mattresses or three course mattresses?

A. Three course mattresses.

Q. How many bundles did you estimate were on the beach?

A. I didn't estimate it; it was simply a rough estimate and I could not tell exactly how many.

Q. Did it ever happen in the course of your observation that certain mattresses went to pieces without going into the works at all?

A. As I remember, seven mats during the construction of

the breakwater, were lost entirely,—torn to pieces in the operation of sinking them.

Q. If they came beyond a certain line in sinking them, were they rejected?

A. No.

Q. None of them were rejected?

A. No.

Q. Wasn't it designated in the specifications that they were to be placed in a certain position on the jetties?

A. Yes, sir.

Q. Suppose they were not placed in that position, what became of them?

A. They were paid for.

Q. Of your own knowledge?

A. I do not know that they were paid for, but they were reported.

Q. Did you ever know of any of the mats going out of the proper line?

A. Some of the mats were as much as fifteen feet out of the proper line.

Q. You reported them?

244 A. I wasn't inspector when the mattresses were sunk.

Q. Did you know that a mat was 15 feet out of proper line?

A. I did.

Q. How did you happen to know that?

A. I was given the list by the inspector.

Q. You do not know whether that was reported or not?

A. Not officially reported, I do not.

Q. That wasn't a part of your duty?

A. No, sir.

Q. Now, the mattresses that went to pieces, you don't mean to say that they were paid for, do you?

A. Certainly not.

Q. Who reported those?

A. They were not reported at all.

Q. They were not even reported as being in the works?

A. No, sir.

Q. Did you ever have occasion to report any deductions against the contractors on account of insufficient material?

A. Not under the contract of 1896.

Q. Have you ever reported any at all under any contract?

A. I don't remember; possibly I have; I don't recollect just now.

Q. You cannot possibly recollect that you did report that they were reduced?

A. No, sir.

Q. Now, in regard to the construction of the mattresses; you were never at the camps, as I understand it?

A. I didn't say never, I said only occasionally.

Q. About how many times?

A. Four or five times in all, I reckon.

Q. Was it a part of your business to be there?

A. It was not, as I understood them.

Q. Have you any familiarity with the construction of mats?

A. I have been on the works about 15 years.

Q. Have you any familiarity then with the construction of mats?

245 A. Certainly.

Q. Where did you acquire it?

A. On this work.

Q. You never had seen any constructed until you came here?

A. Not until I came here.

Q. Had you ever seen any constructed until Capt. Gillette came here? If so, when and where?

A. Oh, yes, sir, I had seen them at the camps.

Q. You were there four or five times, I believe you said?

A. Yes, sir, four or five times.

Q. What was your business there?

A. When the work was a little slack in the river camps, it afforded me an opportunity to visit the mat camps, that is the place where the mats were being constructed, and according to my general instructions, that was what I was supposed to do.

Q. How long did you stay there?

A. A few hours.

Q. During those few hours, on those occasions, you acquired all the practical knowledge you have of the construction of the mats, did you?

A. No, sir, not at all.

Q. Where did you get your knowledge of it?

A. By seeing the mats in the work.

Q. After they were constructed?

A. After they were constructed.

Q. Now, you mentioned a mat in which you were able to promenade around in, in a space as big as Col. Barr's desk?

A. Yes, sir.

Q. You say it would be practically impossible to determine with an ordinary mat whether that imperfect work existed in the middle of it?

A. I could not ordinarily tell how the middle was con-
246 structed. the top was all covered up and the sides were all covered up, so that you could see nothing but the ends of the brush and the sides of it.

Q. Was it impossible for you to examine into it?

A. Not impossible, no sir.

Q. Did you do it?

A. In some instances I did.

Q. Did you find them defective?

A. In some instances.

Q. What did you do?

A. When I considered the mats below the standard, laid down to me by Capt. Carter, I reported them.

Q. Was there any particular difficulty in discovering any imperfection in a three course mat?

A. There was some difficulty, but not so much as in a larger one.

Q. Was there any at all?

A. Oh, yes, you could not see the middle course.

Q. Could not you readily sound a three course-mat?—That would be about how high, three or four feet, a three course mat?

A. About five feet.

Q. You said something about Capt. Carter instructing you to report by heights?

A. Yes, sir.

Q. Did you acquiesce in that?

A. I carried those instructions out through the entire contract.

Q. When he suggested that to you, did you acquiesce in it, or did you protest?

A. I didn't say anything at all, I simply obeyed orders.

Q. (Handing witness a photograph) You were shown this photograph (Photograph of a mattress) I believe you testified, or it has been testified, that that was constructed since Capt. Gillette has been here?

A. Yes, sir.

Q. Is that in accordance with the specifications?

247 A. As I understand it, I think it is.

Q. From whom did you understand the specifications, or did you understand them by reading them over?

A. By reading the specifications over.

Q. From your own reading of it, or from what Capt. Gillette has instructed you?

A. Capt. Gillette gave me no instructions at all; he simply told me to carry out the specifications as printed.

Q. And you had no talk with him at all?

A. Not a word that I remember.

Q. Is that your work?

A. No, sir, this was supervised by Inspector Hale.

Q. Is that a fair illustration of all the mattresses constructed under the specifications, since Capt. Gillette's time?

A. I think so.

Q. Do you see any difference in it, I mean between it and the mats constructed under Capt. Gillette's administration? I say, of those constructed since Capt. Gillette has been here, constructed under the specifications,—is there any material difference between that mat and all the rest of them?

A. Only four of them have been constructed since Capt. Gillette has been here.

Q. Is there any difference between that and the other three?

A. I don't think so.

Q. They are practically the same thing?

A. Practically the same thing.

Q. Now, as I understand you that mat, the one you have before you, is similar to the other three; you did supervise the construction of one of the other three, didn't you?

A. No, I did not.

Q. Where did you see it?

A. I was on the work when the first one was sunk.

Q. Have you seen any subsequent ones?

248 A. I saw one that has not been sunk. while it was still on the barge.

Q. Do those you have seen, including the one on the barge, comply with the specifications in all particulars?

A. I think so.

Q. That is your judgment?

A. That is my judgment.

Q. Is that the result of your own knowledge of the specifications, or did you get that from other people?

A. From my own knowledge of the specifications.

Q. From your own interpretation of the specifications?

A. My own interpretation.

Q. Did you have a copy of the specifications? while under Capt. Carter?
A. I did.
Q. Why were they given to you?
A. I do not know. I could not say from my own knowledge, I was not told.
Q. They were just handed to you with absolutely no instructions at all?
A. None, that I remember.
Q. Did you keep them?
A. Yes.
Q. Why did you keep them?
A. I could not say.
Q. You never consulted them?
A. I read them over.
Q. Did you learn them at all? Did you interpret them?
A. I think I understand all that was in them.
Q. Did you from the first?
A. I think so.
Q. This idea you have now of the construction of a mat, did you have that from the first time you read the specifications?
A. I did.
249 Q. And your idea never has varied, never has changed?
A. That is right.
Q. Did you ever report that those mattresses were not built according to specifications?
A. I did not understand that they were to be built according to the specifications. I was taken down the river and shown a mat that was said to give satisfaction, that I knew not to be according to the specifications, and that was satisfactory.
Q. And you had a copy of the specifications?
A. Yes, sir.
Q. And you knew the mats were not in accordance with them?
A. Yes, sir.
Q. And you knowing that the mats were not constructed according to the specifications, and that it was your duty to see that they were in accordance with the specifications, and that those were your instructions, deliberately went against your instructions?
A. If the men in charge show me a mat and say that is

the standard, and if I am to go by that standard, I go by it; that is my duty.

Q. What were your general instructions in regard to this work?

A. I never received any instructions to carry out the specifications.

Q. Will you tell us what instructions you did receive?

A. I could not tell you all the instructions I received; you must remember I have been on this work thirteen years.

Q. And you were never told during all that time that you were to be governed by the specifications?

A. Not that I know of; I don't think I was ever told to carry out the specifications.

Q. I would like you to be positive about that.

A. I am positive.

Q. You ought to be able to swear one way or the other; were you ever told to hold the contractors down to the specifications?

250 A. I never was.

Q. Were you ever told not to show the contractors any favors?

A. I have been.

Q. Who told you that?

A. Captain Carter.

Q. Do you know this book (showing witness book) have you ever seen one like it before?

A. I have; it is the regulations prescribing the general conduct of the department here in Savannah.

Q. Prescribing whose duties?

A. The duties of inspectors, assistant engineers, clerks and every body in the district.

Q. You were an assistant engineer?

A. Yes, sir.

Q. Were those books given out to those various people?

A. I think everybody had one.

Q. Including yourself?

A. I had one.

Q. Did you read it?

A. I did.

Q. Let me read you this: "102.—Mattresses and stone will be measured immediately before they are placed in the works. Mattresses will first be carefully examined, and the inspector must satisfy himself they are constructed in ac-

cordance with contract before he accepts them for measurement." You remember that provision, do you?

A. Yes, sir.

Q. Did you deliberately disobey the instructions contained in this book, to satisfy yourself that they were constructed in accordance with the specifications?

A. I don't think I did; that does not say that they are to be carried out in accordance with specifications.

Q. Did you see that they were carried out in accordance with the contract?

251 A. I had not seen the contract, and didn't know what it was.

Q. You never had seen a copy of the contract until Capt. Gillette came?

A. I never had seen it until a few days ago; I never had seen it until after Captain Gillette came.

Q. And yet you took upon yourself a solemn obligation to see that the contract was carried out?

A. I received my instructions from Capt. Carter.

Q. Did you have inspectors under your charge in any way?

A. Some of them.

Q. You were assistant engineer; when Capt. Carter wasn't there, who was in charge of the work?

A. Capt. Carter was always in charge.

Q. But suppose he was not personally at any particular point on the river and you were, were you in charge of it, subject of course, to Capt. Carter?

A. Subject to his orders I was in charge.

Q. Now, I will read to you from page 17 of this same book, "96. He must thoroughly comprehend the specifications and his general instructions."—You did not take the trouble to advise yourself of that?

A. I did, I comprehended the specifications.

Q. Now, I understood you to say that in your opinion, the general average of the Florida rock was about the specific gravity of 1.07?

A. No, sir, I said 1.96, or about 2.

Q. Was that the average of the samples you took; I am talking about the average rock generally; didn't you estimate that?

A. I did.

Q. You estimated that by your eye?

A. No, I estimated that by specific gravity of the samples

taken, upon nearly 200 samples taken, and the specific gravity determined.

Q. Didn't you say a while ago that 100 samples had been taken?

252 A. Possibly I may have, I think I said 200.

Q. Which was it, 100 or 200?

A. It might not have been quite 200, but it was certainly more than 100.

Q. Didn't you estimate the general average of the specific gravity of the rock in bulk at 1.07?

A. I don't think I made that statement.

Q. 1.07 was it, or 1.96?

A. 1.96.

Q. You did that by eye?

A. No, that is the average as taken by my notes.

Q. Do I understand you to maintain, as an engineer, that it is desirable to have all fascines laying at right angles to the axis of the jetty?

A. I think that is the best position for them.

Q. That is your judgment, why?

A. Because that is in training walls; a majority of the jetties were training walls, in fact, all constructed of this design were training walls, and in training walls they should go at right angles to the current.

Q. That is your reason?

A. Yes, sir.

Q. Why is that, the engineering, desirability of it?

A. If they extend crosswise, the current going at right angles to the bundles of brush, it will stop more material than if the current went parallel to the brush, because it would be more apt to silt up, sand up, fill up.

Mr. Charlton, of counsel for defense: (Addressing the Judge Advocate) Have you those tables that Mr. Cooper made up as to the cost of the mats?

The Judge Advocate: No, I think the witness has them. (Witness handed counsel the tables referred to)

Q. (Mr. Charlton continuing) These are the two tables from which you read?

253 A. That is for the mattresses as put in the works,—the brush mattresses. I have got another one here for the fascine mattresses.

Q. When you reported to Capt. Carter that, in your judgment, the breakwater down here needed so many yards of stone upon it, you say no attention was paid to it, and you

subsequently insisted upon its being done and had quite a conversation with Capt. Carter in his office; I want you to try to recall when you had that conversation, and saw Capt. Carter write that letter to the contractors?

A. The letter is on file in the office; that will show it.

Q. You cannot recall the time?

A. I think I can; I would only have to give it as my opinion, because the letter is on file, and I am not certain, but I think it was some time in June.

Q. The latter part of June?

A. Somewhere about that.

Q. How long after that did Capt. Carter leave here?

A. About one month.

Q. You say nothing was done in between those periods in regard to putting on more stone?

A. Putting on of extra stone, you mean?

Q. Yes?

A. I don't think so; there may have been a few barges.

Q. Has any been done since?

A. A great deal; I don't remember that any was put on prior to Capt. Carter's leaving, though I would not state that as a fact.

Q. So it is possible that the contractor may have complied with this letter?

A. No, sir, he did not, because several mats were sunk with less than 200 yards on it.

Q. Did you report that?

A. It was not my place to report it, it was the place of the Inspector

254 Q. Do you know whether or not he reported it?

A. He did report it, the letter will show.

Q. Who was that inspector?

A. T. J. Daniels.

Q. Now, referring to your estimates of the cost of constructing these mats, the cost per square yard, which I understand you to put at nine cents—?

A. Nine cents for the previous mats.

Q. On those now built, 40 cents?

A. Forty cents; the previous mats were nine cents and the present mats forty cents per square yard.

Q. Did you ever construct a mattress of the previous type?

A. Did I ever personally construct one?

Q. Yes?

A. I never did.

Q. How many did you see constructed?
A. I have seen under process of construction possibly four or five.
Q. While being at the camp for a few hours at a time?
A. For a few hours at a time.
Q. How many tugs have you ever bought?
A. None.
Q. How many mules have you ever purchased?
A. I never purchased any.
Q. How many people have you ever hired in this vicinity to do common labor?
A. I do not know.
Q. Have you ever hired any?
A. Yes, sir.
Q. Have you ever paid for any yourself?
A. Yes, sir.
Q. What were they to do?
A. I have hired all kinds of labor,—common labor, 255 colored men, then some white men on surveys.
Q. Did you ever hire any to do any work of the character indicated by your estimates here, if so, when and where?
A. I said I never constructed a mat personally.
Q. Therefore, you have had no experience with the employment of labor in this character of work?
A. No.
Q. Why did you put 75 men at 75 cents a day in the other estimate, and put 50 men at 50 cents a day in this?
A. One dollar, I think it is; if you will figure it out, I think you will see that to be one dollar.
Q. Why did you make that difference?
A. I put that down 75 cents a day because I believed that was about what was paid by the contractor, but I could not employ them at that. They would not work for me at that, but the contractors seem to get them for less than the government.
Q. Could you get them for one dollar?
A. I could get plenty of them for one dollar.
Q. You put down in one case what you could get them for, and in the other case what you could not get them for?
A. I put down in one case 75 cents because that was work done by the contractors, and I put down in the other case what I believed I could do myself.
Q. This was the 40 cent mat,—you put down one dollar for that?
A. Yes, sir.

Q. Who built that mat,—this forty cents mat?

A. That mat has never been built, that is an imaginary mat.

Q. Now, tell us something about the mats constructed by the contractors under the specifications, what did they cost?

A. I think that (figures as contained in paper) is about the cost of them.

Q. You have made no calculation on that at all?

A. This (indicating paper) is a calculation, but that (indicating the other paper) is my estimate of what I believe the mats would cost.

256 Q. This is a perfectly ideal thing?

A. Certainly; all estimates are ideals; somebody has to see what the cost will be, has to look up the figures and compile them.

Q. You did that without any practical knowledge of the cost of these various things which you put in the estimate?

A. I have been on the harbor several years and I ought to have some knoeledge of it.

Q. Do you mean to say that mules sell for 40 dollars a piece?

A. I don't think my estimate says that.

Q. What is your estimate?

A. I think my estimate is $100, if I recollect.

Q. You have made some more estimates in this business; you made one on Sept. 27th, didn't you?

A. I don't remember, I might have.

Q. I will see if I can recall it to you. Now, I have before me what purports to be an estimate made by you on Sept. 27th, a type-written copy of it.—to which is appended the name, A. S. Cooper, Assistant Engineer. Probably you had better look at it and see if you can recall it before I ask you anything in regard to its contents? (Counsel handed witness paper)

A. Yes, sir, I remember making that estimate.

Q. I find in the estimate you submit to-day the cost of two foremen in that camp, two days, $10?

A. That is $5 a day for each foreman.

Q. On this one of Sept. 27th, is two foremen at $4?

A. Yes, sir, that is as I said before, what I supposed they had,—the contractors, had paid.; but in my estimate, that I submitted to the court, I didn't care to state that, because I don't know that I can hire men for that. I put in this esti-

mate what I know I could hire them for; in the previous estimate I put down what I thought the contractors paid.

Q. One time keeper in the present estimate, $2; one
257 timekeeper in that of Sept. 27th, $1?

A. Yes, sir.

Q. Now, in the estimate for the third design, the 40 cent mat,—the ideal estimate,—I see two foremen, two days, $12; now which is right, $10 or $12?

A. I just explained that in my first estimate, I put down what I thought the contractors paid, but in the estimate which I was willing to swear to, I put down what I knew they could be got for.

Q. You mean that you guessed at the figures in your first estimate?

A. I do not; that is the result of hear-say evidence, what I have been informed; I have not sworn to that; that is to the best of my knowledge, what has been paid.

Q. And is designed to instruct people as to the cost of mattresses per square yard, as built under Capt. Carter's administration?

A. That was designed to express my opinion of what they would cost.

Q. And now you say that you have absolutely no knowledge about it, that it is hear-say and guess-work?

A. It is from hear-say evidence. I have not sworn to it and do not intend to swear to it; but I know the things put down there (indicating the present estimate) can be procured for that price and I am willing to swear to that.

Q. Here are two foremen (indicating in statement) two days, $12, and two foremen, two days, $10?

A. It is a higher class of work and requires better men.

Q. Better foremen?

A. Yes, sir.

Q. Why so?

A. Because it is more skilled labor.

Q. Skilled labor to make a fascine mat under the specifications as you understand them?

A. Yes, sir.

258 Q. And skilled labor to cut off twigs, leaves and branches?

A. No; but to bundle them and construct them into proper mattresses.

Q. What is the additional work of constructing them into fascine mattresses, than would be called for under the old manner of constructing them?

A. Better constructed; better work, and better work means better men.
Q. You mean choked them tighter?
A. Choked them tighter.
Q. Did you ever see any specification fascines choked?
A. I never did.
Q. You never saw the process of choking?
A. I saw the process of choking, but I never saw mats choked.
Q. You saw the fascines well choked?
A. Not fascines, I have seen bundles of brush choked.
Q. Under Capt. Gillette, have you seen any fascines choked?
A. I have not.
Q. You don't know how that is done?
A. I think I do.
Q. Do you know what was put around them when they were choked, what they were tied with?
A. They were tied with lathe-yarn.
Q. You are talking about Capt. Gillette's fascines now?
A. That was used for both; lathe-yarn will apply to both; it was used for both.
Q. I notice in the estimate given to-day, that you put down mules at $100 apiece?
A. Yes, sir.
Q. Twenty mules, $2,000?
A. Yes, sir.
Q. And in the estimate of Sept. 27th, I find you have 50 mules $2,000.
A. That is simply a clerical error; that should have been 20; I did not intend that for 50. That is an accidental mistake.
259 Q. Well, are these clerical errors;: captain of tug boat, in estimate given to-day, $70; in estimate given on Sept. 27th, $50?
A. No, sir, I have changed that purposely.
Q. Then the engineer the same thing?
A. I changed that purposely.
Q. And the firemen?
A. Yes, sir and the fireman.
Q. He has been increased 25%?
A. Yes, sir.
Q. And likewise the cook?
A. Yes, sir.

Q. And the deck-hand?

A. I increased the whole, making the cost of the tug about $15 per day instead of $12.

Q. Then I notice here an estimate of Sept. 27th, before you reach your final conclusion, upon which you are estimating the cost of these mats per yard, this item.: "Lobbying River and Harbor Bill through Congress, $25,000?"

A. I do not know anything about that; I know that item is in there.

Q. Where did you get that information from?

A. I simply put that in there, thinking possibly that might have been paid; I didn't know that was paid.

Q. Who was to pay that?

A. That is what it cost to get that bill through Congress.

Q. You think the money with which they were to buy Congress was to be paid—?

A. If they paid it.

Q. Do you know that it was paid?

A. I do not.

Q. And you absolutely put in a libelous thing like that without any information at all?

A. It is simply hear-say.

260 Q. Hear-say from whom?

A. From some of their own men, I don't know who.

Q. Not even from the men themselves, but from some unnamed, indefinable person, you put in an item there of an amount paid for the purchase of Congress?

A. It need not necessarily be for the purchase of Congress.

Q. What do you mean by it then?

A. It means for work in Congress to explain what that Bill was for.

Q. That was charity then?

A. Call it what you like.

Q. What is a proper thing? I want to find out now, in making up that estimate, upon which a man's position might depend, what you meant by such an item as that?

A. I have explained what I meant as near as I can.

Q. That is the only explanation that you have of that remarkable item that went into the cost of the mat?

A. That is the only explanation I have.

Q. And in spite of that you could not get it beyond nine cents?

A. No, sir.
Q. What experience have you had in hiring the privilege of cutting brush here or anywhere else?
A. That is from information gathered from others.
Q. That is your estimate from what other people told you?
A. Yes, sir, what other people told me.
Q. And you put down the same amount for the one course mattresses that you do for the eight course mattresses?
A. Yes, sir.
Q. So you pay the same amount for the privilege, irrespective of the amount of brush you cut?
A. It takes about as much brush to make one of these specification mats of one course as it would take to make one of the eight course mats under the old style of con-
261 struction. That is what I mean by putting that item in as the same.
Q. Do I understand you to say that it cost exactly the same thing, that the same amount of brush went into a one course mattress under Capt. Carter's administration, as went into an eight course mattress,—is that your testimony?
A. No, sir; I didn't say that. I said that it took about as much brush for an eight course mattress of the old style construction as went into a specification mattress built under Capt. Gillette.
Q. That it took the same amount of brush for a Gillette one course mattress as for a Carter eight course mattress?
A. That is what I said.
Q. And you put down for the privilege the same thing for an eight course mattress as for a one course mattress?
A. I do not know that I made any such statement.
Q. If you did, it is in here? (Statement)
A. Yes, sir.
Q. You have said several times that you have been here off and on for 13 years?
A. Yes, sir.
Q. You have had considerable experience with this work; were you in charge of the construction department any?
A. Yes, sir.
Q. Have you made honest reports about it?
A. I think I have.
Q. Do you know?

A. I have.
Q. You meant to be honest in your reports?
A. Yes, sir.
Q. Have you any pride in your work?
A. Yes, sir.
Q. Is it good work?
A. Yes, sir; it has accomplished what it was intended to accomplish.
262 Q. The work has accomplished what it was intended to accomplish?
A. It has, undoubtedly.
Q. Did you ever, under the contract of 1896, report to Capt. Carter that there was plenty of material in the mattresses furnished and that the material was good?
A. Possibly I might.
Q. Would you have done that if it was not true?
A. That answer means this: it means there was plenty of material in that mat according to the standard given me by Capt. Carter to work by; it does not mean that there was plenty of material in it according to the specifications; a plenty, as I understood my instructions, but not according to the specifications.
Q. As you understood the specifications, that was not good material, nor sufficient material?
A. That is right.
Q. But as Capt. Carter instructed you, it was good material and sufficient material and did its work?
A. It did its work and was according to his instructions.
Q. Have you ever stated,—under the contract of 1896,—that the alleged brush fascine, or bundles of brush, or whatever you call them, were better for the work in this river, than Capt. Gillette's military fascine?
A. I never made the statement.
Q. What do you say right now?
A. I think it is not as good.
Q. Not as good, why?
A. Because for the same number of fascines you would not get as large a height in your construction; that is your construction would cost you probably double the amount of work. A jetty, constructed of fascines according to the specifications, with all the grillage poles in in accordance
263 with the specifications, would cost about one half of what it did under the old brush mats.

Q. Is it your idea that the government is after saving money on this work, or after getting satisfactory results?

A. Saving money and getting satisfactory results both.

Q. But rather than spend the money they should get unsatisfactory results?

A. I did not say that it would best to get unsatisfactory results rather than spend the money. Mats constructed according to the specifications would build up more. The specification mats would give two feet for each course, and in the construction of these brush mats we didn't gain but about a foot for each course of mats.

Q. Isn't the primary object of putting down mats to catch the sand and accumulate the silt and get a foundation?

A. I was after a foundation, and after getting height mainly.

Q. What is the object of putting down mattresses at all if it is not to accumulate the sand and catch the silt?

A. It is for both.

Q. Is not that the primary object?

A. I do not think so in a harbor; it would be the primary object on bare, exposed places,—the primary object there would be to get a foundation, but in a harbor, where there are training walls and fifteen feet of water or ten feet of water, one of the primary objects is to get height.

Q. But in breakwaters and in Cumberland sound, the primary object is to get something down there that will accumulate sand and silt and form a natural jetty as far as possible?

A. I don't think so. I think the proper method is to put in single course mattresses and to let the foundation be of rock. The idea of putting mattresses in the open sea is a great mistake.

Q. That is your opinion as opposed to Capt. Carter and the Chief Engineer and the Secretary of War?

A. That is my opinion, opposed to all of them.

264 Q. Now, if I recollect your description of the mattresses built under Captain Gillette's instructions, and in accordance with the specifications, you took a bottom grillage, and then you put a mattress on top of that, and then you put a top grillage on that, and so on?

A. In this harbor Capt. Gillette never constructed anything but a single course mat; he did at Fernandina, but I know nothing about it.

Q. Now, you were building a four course mattress?

A. Yes, sir.
Q. Do I understand that you put first a bottom grillage?
A. A bottom grillage; I mean a double system of poles both ways.
Q. Then you put on your fascines?
A. Yes, sir.
Q. Then put a top grillage on that?
A. Yes, sir.
Q. Then upon that a bottom grillage and the next course?
A. Yes, sir.
Q. Was that between two courses?
A. Between each layer of fascines, not courses; a course consists of a grillage and fascines, and between each layer of fascines I would have two grillages of poles, or four single systems of poles in the multiple mat.
Q. Now, when you put these down upon the ocean bar,—put down the mattresses in that condition, what is going to become of the poles?
A. They will be either embedded in the sand or eaten up by the worms if they are not covered up,—one or the other; if they are not covered up, they are certain to be eaten up.
Q. That is your idea not only of a specification mattress, but of a proper mattress for this character of work?
A. What do you mean?
Q. Is that your opinion, your judgment, as to a proper mattress for this character of work,—the one you have
265 just described?
A. I think so. For work in Savannah Harbor, these rough brush mattresses are just as good, provided you take into consideration the price; in fact, better, because they would be cheaper, but when you pay for these inferior brush mattresses the same price you do for the fascine mattresses, then the fascine matresses are the best, because you gain the most hight from it.
Q. Suppose you left out the grillage altogether, and instead of the grillage used a flexible fascine, what sort of a mat would that be?
A. I would not think it a good construction at all; it would be liable to go to pieces before it sunk.
Q. Suppose, instead of going all to pieces before it sunk, it got into the work, what would be its worth there as compared to the mattresses you are talking about?
A. It would not be qorth quite as much as the mattresses with the grillage, because these grillages being in place and

these fascines being in place and rock on top,—there is a great deal of space in there, a great deal of air, and if that is put into a river with a great deal of sediment and a great deal of sand, these spaces are liable to fill up, and, after they do fill up in a solid manner, you gain some hight there that costs you nothing.

Q. I am speaking now of rougher water, like Cumberland Sound and Tybee Breakwater; I understand you to say that the specification mattress is better than the first I have described where the fascine is used?

A. I would consider them better. As I said before, I would use a single course mat. I would put only one course for the reason that if you put more, it is liable to be eaten up by the worms, but where the bottom is real hard, I would put in no mattress at all; I would simply build of rock. That is the best way to do I think; that is the way it was done at Charleston.

266 Q. Is it your judgment that the granite is better rock for this work than the Florida rock?

A. I think so; decidedly.

Q. You have some reason for thinking that?

A. It is heavier.

Q. Is that all you want,—weight?

A. On the bar on the outside that is what you want, weight, and what you must have, ot it will be torn to pieces.

Q. Which rock do you consider the best?

A. For outside work?

Q. Yes?

A. Granite.

Q. Which granite?

A. Any granite.

Q. There are two or three mentioned here?

A. The New York Granite is good.

Q. How about the Georgia granite?

A. Georgia granite is good; I would consider it just as good as the New York rock, probably better, because it seems to be harder.

Q. Now, the rock that was put in on the ocean bar was Florida rock?

A. In Savannah, yes, sir; not entirely,—some ballast was put in, but most of it was Florida rock.

Q. Do you know anything about what was put in at Cumberland Sound?

A. Only from hearsay.

Q. Have you never been there when rock was put on the jetty?

A. I had charge at Fernandina in 1887; it was all Florida rock at that time.

Q. You never saw New York rock put in at that time?

A. No, sir.

Q. Have you ever known of your own knowledge that the Florida rock has been known to form into a solid mass at Cumberland Sound?

A. I do not know that of my own knowledge.

Q. What is your observation of Florida rock? Has
267 it ever formed into that sort of a mass anywhere?

A. All rock on the Savannah Harbor between certain limits is a solid mass.

Q. Is that true of Florida rock?

A. It is true of Florida rock.

Q. Now, if Florida rock will catch these barnacles and shells and form into a solid mass, isn't its very lightness a desirable element, in-as-much as it will not sink into the sand?

A. I don't see why lightness should be desirable. You want something to sink them with, and Florida rock does not.

Q. Isn't it a lighter rock than the granite?

A. Yes, sir.

Q. Does it sink as readily into the sand as granite?

A. Yes, I think it would if you threw it right on the sand.

Q. I am talking about throwing it on top of the mattresses?

A. Then sand does not come into the question.

Q. Sand does come into the question; don't sand get into the mattresses sometimes?

A. Yes, sir; and with single course mattresses, in time it would be covered up so that you would not know that the jetty was there.

Q. Would not the Florida rock be desirable, then, on account of its lightness?

A. I don't think so; you might construct it of a feather.

Q. Would a feather sink a mattress, do you think?

A. I think not.

Q. Your estimate, as I recollect it, is based upon the construction of two mats a day?

A. Yes, sir.

Q. During the life of the contract,—the practical life of the contract?

A. That estimate was really intended for the contract of 1892, and not for the contract of 1896.

Q. Would it not be equally true of the contract of 1896?

A. No; you would vary the details.

268 Q. How many mats were constructed a day under the 1896 contract?

A. You could not have put in two of those a day.

Q. You didn't make any estimate for the contract of 1896?

A. That specification mat is for the contract of 1896; let me see it, and I can tell you; that is one mat a day.

Q. Now, as a matter of fact, don't you know that there is no such average as that? That an average of one mat in two days is excessive?

A. No; I do not think so. You will see that I have estimated for a very large plant,—a larger plant than is used on the breakwater.

Q. As a matter of fact, what was done on the Breakwater under the contract of 1896; what average of mats did come in under that contract?

A. I don't know; I think probably between fifteen and eighteen a month.

Q. Now, in this estimate which you have drawn up,—have you taken into consideration the loss of mattresses?

A. I have not.

Q. As a matter of fact, were any mattresses lost?

A. Oh, yes, sir.

Q. Were they lost frequently?

A. About seven of them were lost.

Q. Now, if those, instead of being worth $780.00 were worth $2,000,—isn't that very material?

A. I said that was the cost of the mat; I didn't say that was the price the contract should be let for. If you figure the amount the contract should be let for, you should add twenty-five cents for exposed places like that. That is simply the cost.

Q. You estimate these mattresses as put into the works? —cost per yard put into the work?

A. It says cost, but does not say what I would bid.

Q. So you have left out of here the element of storms?

A. Yes, sir.

Q. And the element of lost mattresses?

A. Yes, sir.

269 Q. And the element of rejected mattresses?

A. There were no rejections.

Q. Was there a possibility of any rejections?
A. There might have been.
Q. Have you ever known of any being rejected?
A. Not under that contract.
Q. Under any contract? I want to know if it is a conceivable element to enter into the matter at all?
A. I don't think any have been rejected on Savannah Harbor.
Q. You have left out of the question the possible destruction of the plant by storm?
A. Yes, sir.
Q. Do you happen to know that we have right here one of the stormiest regions on the Atlantic coast?
A. I have seen some of them.
Q. You saw the storm of 1896?
A. No; I was not here.
Q. You saw the storm of 1893?
A. I did.
Q. Did you ever see any worse storm than that?
A. I have.
Q. Where?
A. In Kansas.
Q. A cyclone?
A. Yes, sir.
Q. Did you ever see a storm on this coast worse than that?
A. No.
Q. You know the people look out for them every fall?
A. Yes, sir; think that might be the time, along in August.
Q. And you think the disposition is to rush the work in the summer months on account of that contingency?
A. Yes, sir.
Q. As a matter of fact, when you get up further in Cumberland Sound, haven't you got to build a trestle out there?
270 A. I think it is quite probable they will have to do that.
Q. That you have not taken into consideration at all?
A. I was not estimating on Cumberland Sound, but on Savannah Harbor.
Q. Were any changes made in the construction of those bundles of brush from the time you came here last until Capt. Gillette took charge?

A. No material change that I know of.
Q. I mean in the general method of construction?
A. No material change that I remember of.
Q. Were you instructed in any way to modify the construction of those fascines or mattresses?
A. Do you mean in 1892 or 1896?
Q. Since you were last here? you came here, I believe, in 1893/ the last time; I am talking about that. From the time you came here in 1893 until Capt. Gillette came, I understand you to say that there was no material variation in the method of constructing those bundles of brush and mattresses? Were you instructed to vary the construction of them in any way?
A. Shortly after the storm of August, 1893, there was a change. I suppose that is what you have reference to.
Q. I do not; I do not know; I ask you if you know of any change?
A. There was a change at that time. When I came here in August, 1893, the mats were being constructed off the end of the lighter; that is constructed off the gin barge and the gin poles were over the end of the lighter; they were building continuous mats, and building three at a time, and those were being sunk. They built, say, up to twenty feet or thirty feet of mats at a time, and, when that was built to thirty feet for the entire three courses, the poles would be pulled out from under it, so that the mat would come to the edge of the water, and they would continue that process again, making a continuous mat for another training wall. Then in the storm of August, 1893, this plant was scattered, and some
271 of it was lost, and the question came up as to the method of starting the work again, and the suggestion was made that the mattresses be built on the barge entirely, the barge having the gins across the side of the beams instead of across the end, they could build not only one mat, but as many mats as necessary for the entire dam; in other words, could sink the entire dam at one sinking. That was the change.
Q. In other words, it was more a change in the method of launching the mat than anything else?
A. No; it was a decided change. Before they were working slowly; now they built the whole thing at once, and put it into the works four or five times as fast.
Q. Was there any change in the method of constructing either the fascines or the mattresses.
A. That is the change in the mattress; there was no

change in the fascines or bundles of brush, but there was a change in the style of constructing the mats, as I described, from launching from the end to launching from the sides, and in building multiple instead of single mats.

Q. I want to know whether there was any change in your instructions; from the time you came here and got your instructions were any different and varying instructions given you by Captain Carter up to the time he left here?

A. In some minor details; not generally, I think.

Q. I mean in what you called instructions?

A. He would give instructions every day, verbally and written.

Q. Whom did you succeed here?

A. I don't know; there were several Inspectors on the work, and the man I found immediately in charge was a man by the name of Felber.

Q Where was he?

A. In Savannah Harbor; I do not know whether he was in charge of the entire Harbor or a small part of it.

Q. Did he turn his papers over to you?

A. He did.

272 Q. Do you know who preceded him?

A. I do not.

Q. Among any papers you got, or letters of instructions you got from Felber—?

A. I didn't get any instructions or letters from Felber.

Q. Among the papers turned over to you by Felber as appertaining to his office, did you find any letters addressed to P. E. Twiggs, which Felber had as successor to Twiggs?

A. Felber turned over to me no papers; he simply turned over to me a few small field books of this style. That was the only papers I received from Felber; no other letters or instructions about the work at all.

Q. I want you to look at this letter, (handing witness letter book) and, if you haven't got the original, it is probably lost. Did you ever receive such a letter as that?

A. I never received this letter. Do you wish me to read its contents.

Q. No; if you deny having received it off hand that way without knowing its contents, I have no objections.

A. No, sir; I never received that letter.

Mr. Charlton: It appears to be letter 216, page 331, Book No. 2, dated July 3rd, 1893.

Q. You deny, then, positively that you ever had such a letter in your hand?

A. I never had it, and never saw it.

Q. (Handing witness letter book) Will you kindly look at this, and say whether you ever received that paper?

A. I suppose I received it; I don't remember exactly.

Q. The original of that paper, if you received it, what has become of it, do you know?

A. I think I have it.

Q. Will you be kind enough to produce it?

A. I haven't it with me.

273 Q. At any time?

A. Yes, sir; I will/ It is possible that I haven't it, but I think I have.

Q. If you haven't it, it is because it has been inadvertently lost?

A. Yes, sir; the intention was to keep it.

Mr. Charlton: That begins on page 426 of Book No. 2 and extends to page 428, being dated October 2nd, 1893, and is a memo. for Mr. A. S. Cooper.

Q. (Handing witness book) Will you be kind enough to look at this one, and see if you can recall it?

A. I remember that letter.

Q. Did you understand it?

A. I think I did.

Mr. Charlton: This is dated Oct. 23rd, 1893, Book No. 2, page 438, and is a memo. for Mr. Cooper.

Q. Have you that letter?

A. I expect I have.

Q. If you haven't got it, it is lost or destroyed?

A. If I haven't got it, it is accidentally destroyed; if it was destroyed, it was not done purposely.

Q. I don't mean to imply that; I just want to lay the foundation for introducing a copy of it. If you have it, will you be kind enough to produce it?

A. I will.

Q. You say you understood this letter?

A. I think I did.

Q. Now on or about October, 1893, what did you put into the holes of the Marsh Island Closing Dam? what did you fill them with?

A. With bundles of brush.

Q. Why.

A. Because I was told.

Q. Who told you?
A. Capt. Carter.
274 Q. Verbally or in writing?
A. In writing. That letter I think says—
Q. Show it to me in that letter?
A. Says brush fascines of the same style of construction as mentioned before.
Q. So that you had heard the term "brush fascines" back yonder in 1893?
A. Yes, sir.
Q. And under the order to fill in the dam with brush fascines, you did put something in it?
A. I put in what I understood the order to mean.
Q. Did I understand you correctly that you never had recommended deductions from the mattress work?
A. I didn't say that.
Q. What did you say?
A. I said possibly I might have recommended it, but I didn't remember of any specific case.
Q. (Handing witness paper) Is that a true paper?
A. Yes, sir; that is my writing.
Q. That is your signature?
A. Yes, sir.
Q. What is the date of that paper; did you notice?
A. It is dated June 10th, 1895.
Q. You seem to have made some deductions, then, didn't you?
A. That was simply not put in the totals at all; it was left out. One of these mattresses in this report was torn to pieces in the process of sinking. Of course, the measurements were made, and put down in the report, but it was not figured up in the totals as given by me; in other words I report the simple dimensions of it.
Mr. Charlton: We offer that paper in evidence. (Marked Defts. Ex. No. 1).
Judge Advocate: We have no objection to the admission of it.
275 The Court: The Court would like to be informed as to the character of that paper.
Mr. Cahrlton: It is a report of Mattress and Stone Work done at Cockspur Island during June 1-10, 1895, by Atl. Contr. Co. under contract of Oct. 22, 1892.
Q. (Mr. Charlton continuing) Now, under the contract of 1896, did you make any deduction?

A. I think those deductions were made by the Inspector. I think there were some deductions of a course or so now and then for damaged mats, not by me, but by the Inspector.

Q. It came under your supervision to report it?

A. Yes, sir.

Q. Did you not check it and approve it?

A. I did; the Inspector reported part of the mat lost, and I signed his statement.

Q. Without knowing whether it was true or not?

A. I had his statement for it.

Q. And you passed it on to Capt. Carter, who relied upon your report?

A. Yes, sir.

Q. Look at that (Handing witness paper) paper?

A. That is a case the same as the other. One mat was destroyed by storms, and the measurements given in the report, and the most deducted; the mat did not go into the jetty, and was consequently deducted.

Q. (Handing witness another paper) Now look at that?

A. That is another case; the same; the mat was lost, and the measurements made in the report, and deducted because it did not go into the work.

Mr. Charlton: We offer these papers in evidence. (Marked Defts. Ex. No. 2 and Defts. Ex. No. 3)

Judge-Advocate: We have no objections.

Q. (Mr. Charlton continuing) Now, will you look at these three papers, and show where you indicate on them anything in regard to the brush?

276 A. There is nothing on this in regard to the brush.

Q. What design of mat is mentioned there?

A. In my own report, I have the third design mentioned. In Mr. Daniel's reports, he also has the third design mentioned.

Q. So that in both Mr. Daniel's reports and in your own report you describe these as mats of the third design?

A. The third design; yes, sir.

Q. How do you reconcile that with the statement that you always put in the ordinary brush?

A. You don't remember what I said. I said the ordinary brush was usually put on my brush measurements; two reports. You will find in addition to that report the stone measurement reported, and where the brush was put in. You will find the brush measurements, and on that report is where I wrote the word "Brush".

Q. We haven't those reports before us; the one we have before us describes those mattresses as mattresses of the third design?

A. The third design.

Q. The third design of what?

A. The third design according to my instructions as I understood them.

Q. The third design according to the specifications, wasn't it?

A. Modelled after the third design of the specifications; it is a modification of the third design of the specifications.

Q. What do you call a modification of the third design,—a military fascine?

A. Not a military fascine; that is the main modification.

Q. (Handing witness paper) Will you look at that letter, and say whether it is the original; the letter is in your hand-writing, and that is your signature?

A. Yes, sir; certainly.

Mr. Charlton: I will offer this in evidence. (Marked Defendant's Ex. No. 4, and copy attached to the record)

Judge Advocate: I have no objections.

Mr. Charlton: I will read this letter, Def's Ex. No. 4:

277 "Tybee Island, Ga., March 12th, 1897.

"Capt. O. M. Carter,
"Corps of Engineers, U. S. A.
"Savannah, Ga.

"Sir:

"On March 10th I visited the Breakwater, and found Mat "No. 45 in the water and rapidly going to pieces. As there "was not much of a sea on, I examined the mat carefully to "see what was the matter. I found that the material in the "mat was good and there was apparently plenty of it; but "that the wiring was very poorly done. The only wire that "held the three courses together, as near as could be judged, "were on the outer edges of the mat, and only about ten on a "side at that. While this defect would have made no dif-"ference if the mat had been placed in position, yet it made "it possible to do bad work while placing such mats; there-"fore the contractor has been notified that such mats are not "satisfactory.

"Very respectfully,
"Your obedient servt.

"A. S. Cooper,
"*Asst. Eng'r.*"

Q. (Mr. Cahrlton continuing) Apparently you were satisfied with the material and everything appertaining to that mat save the wiring, is that true?

A. That is true, according to my instructions, as I stated before.

Q. I am talking about what the report says; that is true by your letter?

A. That is true by my instructions. I was following out orders and instructions, and it didn't make any difference whether it was according to the specifications or not; if I was told to do a thing, I had to do it, or get out of the way, and let somebody else do it.

Q. Do you mean to sav that you would do a thing you
278 knew was not right rather than lose your place?

A. I obeyed orders.

Q. You obeyed orders that you knew were wrong rather than lose your place?

A. I did.

Q. Now, when you reported to Capt. Carter that the material in the mat was good and that there was sufficient of it, you were reading into that a private understanding you had with Capt. Carter,—is that what you mean?

A. That is what I mean.

Q. Was anybody else a witness to that private understanding save you?

A. There were several present when he gave me instructions about the mat.

Q. He gave you a copy of the specifications and a book of instructions, and told you they were to be of the third design, yet you made reports to him in regard to that and went outside of that whenever you made a report,—it was to be with this secret understanding?

A. There was no secret understanding; I was taken down on the works and shown a sample of the work, and I was told to carry on the work as I found it, and that I did.

Q. You had the specifications, though?

A. I did.

Q. And you understood them from the beginning thoroughly?

A. I did.

Q. And you reported that the mattress was of good material and sufficient?

A. Yes, sir; according to my instructions.

Q. You said nothing about according to your instructions

in your letter, did you? If you and Capt. Carter had died, Capt. Gillette would have considered that it was a proper report under your instructions?

279 A. He would have known that it was not a proper mat or it would not have gone to pieces. The letter especially states that there was no sea at that time, and a mat properly constructed according to the specifications, when there was no sea, could not go to pieces.

Q. You, then, rejected that mattress because the wiring was not good?

A. I recommended the rejection of it because it didn't go into the work.

Q. You said it would have been all right if it had gone into the work?

A. All right according to my instructions.

Q. Didn't you, in black and white, say that the material was good and sufficient, and that even in its then condition, if it had gotten into the works, it would have done its work properly, but the wiring being insufficient, and it going to pieces, you recommended a deduction of it?

A. There is no recommendation there. It didn't go into the work, and, as a matter of course, they would not pay for it.

Q. It didn't go into the work, but was sufficient in every other respect, according to your instructions, except as to the wiring?

A. Except as to the wiring.

Q. They told you to be careful about the wiring?

A. They did.

Q. That was the only defect in it, according to your instructions?

A. I was always instructed to report everything that came on the works unusual; that was the general instructions, and you will find them in the book; any unusual circumstance occurring on the work was to be reported to the officer in charge.

Q. And you say that you got that out of this book that I showed you?

A. Yes, sir.

Q. You said something about some additional report, showing the brush in addition to these things here?

A. Not in that contract. When there is brush being

280 put into the walls, there is a supplementary report accompanying these reports, showing how much brush was used.

Q. I am talking about this work here that you reported on Cockspur Island; you said that it was in accordance with the third design?

A. I never said that.

Q. Wasn't that what you meant?

A. You don't understand it?

Q. You don't mean to report any brush about this work here?

A. That is under the contract of 1892.

Q. No; the 1896 contract?

A. No brush of any consequence was put in under that contract.

Q. The brush you are talking about was loose brush, or bundles of brush, dumped in between the piling?

A. Dumped in between the piling.

Q. It was done that way purposely?

A. Yes, sir.

Q. It has nothing to do with these reports about mattresses of the third design being lost?

A. No.

Q. Why did you mention it in that connection?

A. I didn't mention it in that connection. I was speaking about the contract of 1892.

Q. Did you ever report any mattresses of the second design?

A. According to my recollection, no mattress has been put in Savannah Harbor of the second design.

Q. On the Breakwater?

A. None of the second design put in.

Q. Now in the River?

A. None that I know of.

Q. At Barnwell Island?

A. No, sir.

Q. You never reported any?

281 A. No, sir; not that I know of.

Q. (Handing witness paper) Be kind enough to look at that paper?

A. That is not my report; that is a report as made out by another man and signed by me, but there is a clerical error there.

Q. But we never would have discovered that error if there never had been this prosecution of Capt. Carter?

A. Probably not.

Mr. Charlton: We will put it in with the Court's permission. (Marked Defendant's Ex. No. 5, copy attached to the record)

The Judge-Advocate: We have no objections.

Q. (Mr. Charlton continuing) That being a clerical error according to your remembrance of it now after three years time; did you never make any other report about a mat of the second design that was not a clerical error?

A. Not that I know of. These mats that I see you have described there are mats sunk along pole dams; it may have been customary to call those mats, mats of the second design, but, if they were so called, it is erroneous.

Q. So when we run across an expression as to the design of these mats, we are always to understand that it means nothing?

A. That was an error.

Q. And when it says the third design, it does not mean the truth; is that the idea?

A. No, sir; that is not the idea.

Q. (Handing witness paper) Here is one apparently in your own handwriting?

A. Yes, sir; as I say, it may have been customary to call these mats mats of the second design.

Q. Where was that put.

A. It is in the Marsh Island Closing Dam.

Q. Is that another clerical error?

A. That is not correct; those mats are not according to the second design.

282 Q. Do you mean according to the second design as interpreted by Capt. Gillette and by you since he has come here?

A. Yes, sir.

Q. They are built according to the second design as you understood them at the time you put them down?

A. I didn't know that had been put in there, but it is an error; I will state that as being an error.

Q. That is, in view of your enlightenment about the second design?

A. No, sir; I don't think so. That is simply an error, a misstatement.

Mr. Charlton: We offer this paper now. (Without objection the paper went in, marked Defendant's Ex. No. 6, copy to be attached to the record.)

Mr. Blair, of Counsel for Defense: If the Court please, we would like permission to take a piece of each of these stones, to have the specific gravity determined by our experts, if that is permissible.

The Court: You have no objections, Col. Barr?

Judge-Advocate: I have no objections.

Judge-Advocate: I move now that the Court adjourn until 10:30 o'clock tomorrow morning.

The Court: If there are no objections, the Court stands adjourned to meet here tomorrow morning at 10.30 o'clock.

(Court adjourned at 2.55 o'clock p. m.)

THOMAS F. BARR,
Col. & Asst. Judge Adv. Genl, Judge Advocate.

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United States Court Room,
Savannah, Georgia,
January 21, 1898.

The Court met pursuant to adjournment at 10.30 o'clock A. M.

Present: All the members of the court and the Judge-Advocate.

The accused, his counsel, and the reporters, George T. Cann and W. O. Tarver, were also present.

ARTHUR S. COOPER, a witness for the prosecution on the stand, testified as follows:

Cross-Examination (Continued).

Questions by Mr. Charlton:

Q. Mr. Cooper, you said upon yesterday that whilst you had a copy of the specifications and understood them as now, that you did not feel called upon to go by them because you were carried down the river and shown a mat which was to be your guide. Where was that mat at?

A. It was about half way down the river at a place called Venus Point. We were then constructing what is known as the North Long Island training wall. That wall was being constructed, as I described yesterday, by means of those continuous mats; mats built off the end of the lighter in three courses at a time. Those mats were mats moddled after the third design in the specification. They were the third design with exceptions, and those exceptions were what I suppose

I was to go by by giving me that sample used. I was told that was the class of work that would be satisfactory, or was satisfactory to the engineer officer in charge and I was to carry on the work as I found it being carried on.

Q. And when was that?

A. That was in the latter part of August, 1893.

Q. And who went with you and exhibited the mat to you?

284 A. I think as I remember the exact circumstances, I was sent down the river by myself and Captain Carter came down the river a few days afterwards and showed me those things and told me to look the work over and familiarize myself with the work as it was being carried on and he would give me further instructions later on.

Q. Then you got those instructions from Captain Carter, himself?

A. Yes, sir.

Q. You say those were the third design, with exceptions?

A. Yes, sir.

Q. What exceptions?

A. They were bundles of brush, they were fascines of the third design, except that the poles were not put in.

Q. They were grillages?

A. Yes, sir, grillage poles.

Q. That is, instead of having two sets of poles between the mattresses there was but one? Is that the idea?

A. That's the question I understood you to ask me.

Q. Is that true?

A. I have not given my answer yet. My answer is, that is some instances instead of four single courses, or two double courses, there would be only one single course, or one half of one double course of poles between the mattresses.

Q. Now, with those exceptions, the mat conformed to the third design of the specification?

A. With those exceptions, they conformed to the third design of the specification.

Q. As you now interpret it?

A. As I interpret it, yes, sir.

Q. The mat that you were shown, the typical mat, was three courses?

A. It was a three course typical mat, built after or under the mat as described.

Q. Did it have any poles in it, so you could walk around it?

A. No, it did not, that's the reason why I said I re-
285 ported the mats which had holes in them as not being in accordance with my instructions.

Q. Did you report the holes in the two mats that you did walk around in?

A. I cant remember the details of the reports that I made, I reported to Captain Carter in person.

Q. You did not report in writing?

A. I did not report in writing, I reported to him in person, all the mats that were not being built properly, and some change must take place, they were badly built and they must do better.

Q. Who was present when you walked around in this mat?

A. There could be nobody else in the mat but myself.

Q. But who was present in the neighborhood and saw you go down in them?

A. The contractor's foreman and one of my inspectors.

Q. Well, who was the inspector?

A. John M. Hall.

Q. Who was the contractor's foreman?

A. John H. Gaynor.

Q. Nobody else there?

A. Well, there was a number of men there.

Q. Who now, we want the names of all you can think of?

A. The colored men, I dont know their names. I never did know their names.

Q. Any other white person there?

A. Not that I remember. There might have been, I dont remember now.

Q. Do you remember when that was?

A. That was some time in 1894, it was subsequent to April 1, 1894. The exact date I could not tell you.

Q. And between what other months, approximately?

A. Well, sometime in the Summer of 1894. I dont know.

286 Q. Did you render a rejection for those mats?

A. I did not.

Q. Now, you mentioned two mats, didn't you, in which those large holes occurred?

A. I mentioned that I had gone down in the mats twice.

Q. The same mat?

A. No, sir, two different times?

Q. And on each one that you have just talked about, that you have just given an indication of, who was present?

A. The same parties were present.

Q. How far apart were those two times?

A. Those two times? It may not have been over a week, I dont know, it was about the same time.

Q. Where were those mattresses?

A. Where they were put in.

Q. Where were they at when you walked in them?

A. They were down in position to put in the Cockspur Island training wall, the exact position, I could not tell, somewhere in the neighborhood of Fort Pulaski, a little below Fort Pulaski.

Q. Do I understand those were two distinct mats, or the same mats in which you went twice?

A. Two distinct mats.

Q. About a week apart at a time?

A. Yes, sir, I judge so.

Q. The same persons were present, as far as you know?

A. As far as I know, yes, sir.

Q. When you made the complaint to Captain Carter in consequence with your experience with those mattresses, who were present?

A. To the best of my recollection, it was in his private office and nobody was present but Captain Carter.

Q. You and Captain Carter?

A. Yes, sir.

287 Q. How long was that after the occurrence?

A. I don't know; it was not very long.

Q. Was it after both occasions?

A. It was after the second occasion.

Q. Now, in your estimate of the cost of mattresses per square yard, your estimate rather, of the plant, you figured upon a large plant working rapidly, two mattresses a day: Well, now, as a matter of fact, it worked only one mattress in two days, would that affect your figuring in any way?

A. In making an estimate, a man naturally goes by his past experience. That is all I had to base my estimate on. I had seen as many as four mats placed in one day.

Q. You have not answered my question.

A. I have answered your question, excuse me, from my experience. That is what a man has a right to use. In making up a case, you use your experience. In making up an estimate, I use my experience. That is an etsimate of four mats placed in the works. Four mats as large as 2,000 square yards have been placed in the work in one day. Then it stands

to reason that two could be done in a day. I think they averaged in fact, two a day. I believe they averaged as much as two mats a day under the contract of 1892, during at least, one year after.

Mr. Charlton: Repeat the question, Mr. Reporter.

Reporter: Now, in your estimate of the cost of mattresses per square yard, your estimate rather of the plant, you figure upon a large plant, working rapidly, two mattresses a day: Well, now, if as a matter of fact, it worked only one mattress in two days, would that affect your figuring in any way?

Mr. Charlton: Would it not? Yes or no, Mr. Cooper?

A. I can't answer that yes or no. It must be explained; I can't say.

Q. One minute; I have got the right to exact and get
288 a categorical answer or statement from you. If you cannot answer say so. Now, I ask you that question, whether instead of giving two mats a day the plant would only develope one mat in two days, would that affect your figuring as to the cost?

A. If possible only to put in one mat a day it would affect the figuring in the cost.

Q. How would it affect the matter of interest and deterioration, which you have got at $15, and which is based on the plant turning out two mats a day, when, as a matter of fact, assuming it to be a matter of fact, it turned only one mat in two days, how would that affect your figuring?

A. You are arguing that.

Q. I am not arguing I am assuming.

A. Excuse me, I know it is not so—

Q. Just answer the question please. Assuming it turned out one mat in two days instead of two mats in one day, upon the items of insurance and deterioration, based on $15 a day in your estimate, by what would it be increased?

A. You mean, estimating that the plant that I have estimated on, could turn out only one mat in a day?

Q. I want you to answer my question, which is entirely explicit.

A. That is not explicit.

Q. In your estimate given upon yesterday you estimate one item of $15 for insurance and deterioration of the plant?

A. Yes.

Q. Based upon the idea that the plant was moving rapidly, turning out two mattresses a day, if the plant only turned

out one mattress in two days would that affect the figures and diminish the item of interest and insurance, and, if so, to what amount?

A. You would multiply the item by 4.

Q. It would be $60, would not it?

A. Yes, on that basis.

289 Q. Have you ever prepared the cost of developing of three fascines—the making of three mattresses, first, second and third, or did you confine your attention to the third design.

A. I made it by estimating for the first, second and third design.

Q. A detailed estimate?

A. Yes sir.

Q. Have you those estimates?

A. Yes sir. (Here the witness takes a paper) This is an estimate for the first design. Read it?

Q. No, I want to see it, I have not offered it at all.

A. One sheet is the plant and the other is the estimate.

Q. Have you the second also?

A Yes sir.

Q. When did you first see what you call the bundles of brush that Captain Carter used?

A. In 1886.

Q. Was that the first time?

A. I think it is.

Q. You didn't see any when you came here first in 1884?

A. There were no fascines or bundles of brush used on the first contract, it was all mats of the first design.

Q. Log mattresses?

A. Log mattresses, that's my recollection.

Q. Were there any bundles of brush, brush fascines, as we call them used in any of the works singly without being used in mattresses?

A. You mean on the contract of 1884?

Q. Yes, in the work.

A. Under the 1884 contract.

Q Yes, 1885.

A. Well, the contract was 1884 and the work was done in 1885.

Q. Well, did you see it in 1885?

A. I made the statement that I didn't see any, it is

290 barely possible there may have been a few. Maybe a barge load or something like that, I dont remember. I

dont say there was not, because I am not certain. I have no recollection of putting any brush in that contract.

Q. In 1886, when you remember seeing them, were they then used in mattresses?

A. No, they were piled on the barges and towed to the works and thrown in the work and stones placed on them, they were not built into mats.

Q. Do you mean those bundles of brush were piled on the barges?

A. Piled on the barges and towed to the works.

Q. Do you remember which work they were put in?

A. Yes, sir; Fig Island Jetty, Dam number 36, Dam number 33, and I think some on dams 27, 15, and 10.

Q. Did they answer in description and appearance to what you now call bundles of brush?

A. They did.

Q. Who was in charge of this improvement at that time?

A. I had personal charge of the harbor improvement under Captain Carter's orders.

Q. Who was over Captain Carter here?

A. General Gilmore.

Q. How long did General Gilmore stay here after that time, do you remember?

A. Well, I think that Captain Carter, Lieutenant Carter it was then, reported to Captain Bailey at Charleston, they were all under General Gilmore, afterwards Captain Carter was given charge and reported directly to General Gilmore. After that he was placed in Engineer charge and General Gilmore was relieved and he reported to the Chief of Engineers.

Q. Do you remember when that took place?

A. I could not give you those dates.

Q. Captain Bailey and General Gilmore were in 291 charge for two or three years after you came along?

A. Yes, sir, Captain Bailey.

Q. You said upon yesterday that from 100 to 200 tests—

A. I correct that to 100, it was nearer 100 than 2.

Q. Were made; that includes all tests made of this stone?

A. Yes, sir.

Q. Was it all made under your supervision?

A. I made the tests. The inspectors mainly selected the samples. The samples were selected, I think I tested personally the samples for all the lighters. I think Mr. Daniels selected the samples from 10 lighters and Mr. Keatings the

samples of one lighter, and Mr. Gignilliat the samples of one other lighter.

Q. Then that included all the tests made on the Savannah Harbor, and the Cumberland Contract?

A. I had nothing to do with Cumberland.

Q. What have you done with the sample.

A. I have them at the Engineer's office at Tybee.

Q. How long ago did you make the tests?

A. The first tests were made on the third of August?

Q. Last August?

A. Last August.

Q. They never had been made before?

A. No, they never had.

Q. Now, you also said upon yesterday that as soon as Captain Gillette took charge here that plenty of stone had been put down on the breakwater.

A. I received orders from Captain Gillette to place at least 200 yards of stone upon every mat sunk, or for every mat placed on the works I was ordered to place at least 200 yards of stone on the other mats previously sunk.

Q. How many were placed on the breakwater?

A. After Captain Gillette came?

292 Q. Yes.

A. I think 3000 yards, possibly 4000 after Captain Gillette came.

Q. When was the last put on by him?

A. The last put on was about, I think the 10th day of October. No I guess it was September, I am not certain about that now.

Q. What proportion of that was Florida rock, and what proportion was granite?

A. I think there was about seven lighters of granite and the balance was Florica rock.

Q. What is the balance, how many lighters?

A. I dont know.

Q. Cant you estimate about the proportion.

A. Yes, that would leave probably about 3000 yards of Florida rock put on.

Q. About how many lighters would that make—lighter loads.

A. About 20.

Q. About 20 lighters of Florida rock and seven of granite is that right?

A. That is according to my recollection, it may be wrong, but some where about that.

Q. That is approximately true?

A. Approximately true, yes, sir.

Q. Have you at any time stated publicly that Captain Carter's appointment to London and upon the Nicauragua Canal Commission was due to the contractors?

By the court: What is that question?

Q. Has the witness at any time stated publicly that Captain Carter's appointment to the London Legation, to the London Embassy and upon the Nicaraguan Canal Commission was due to the influence of the contractors?

A. I never made any such public assertion as that.

Q. Have you ever stated it privately, where it could 293 be heard by other people?

A. I dont think I have.

Q. Did you never state it, upon your honor as a witness, I am referring to whether you have ever stated it in the hearing of other people?

A. I think I may have stated that before the Board.

Q. Well, did you do it, dont you know whether you said it or not?

A. I cant remember everything I said before the Board.

Q. Did you never say that the contractor had boosted Captain Carter along.

A. I used that expression, yes, sir.

Q. And when asked what you meant by "boosting" you said they had secured for him the position of Military Attache to the London Embassy, and a place upon the Nicaraguan Canal Commission.

A. I did not say they had procured it, I said I thought so.

Q. Did you have nothing to base that on except your thoughts?

A. That's all.

Q. In other words, that comes under the category of the lobbying item. Does it not. It is about the same basis, the same theory?

A. It is all hearsay evidence.

Q. Hearsay? Well, who told you that?

A. I dont know exactly, you can hear those things and you cant tell where you get them from.

Q. Mr. Cooper, as a matter of fact, you told it to yourself, you are the only person that ever mentioned it; that is, you didn't get it from anybody else, did you?

A. I think I heard it.
Q. You cant tell the person from whom you got it?
A. I cannot.
Q. Did you at any time receive instructions from Captain Carter to hold the contractors strictly to the specifications?
A. Not to my knowledge, I never remember of receiving any such instructions.
294 Q. Have you at any time ever received instructions to this effect? That they were to be held strictly to the specifications, and if they did not conform to them, that you were to go to the expense of stopping the work?
A. I dont remember of ever receiving any such instructions.
Q. You never did?
A. Not to my knowledge.
Q. Would not you remember if you had received positive instructions of that character?
A. I think I would.
Q. And you state now that you do not remember, or that you did not?
A. I dont remember of ever receiving any such instructions.
Q. You stopped work on the breakwater, did you, on the 10th of September, was not that the last work done there?
A. I did not stop work.
Q. Well, who stopped work?
A. The contractors stopped work.
Q. Well, under whose orders?
A. Nobody's orders.
Q. Has there been any work done there on the breakwatrers since the 10th of September?
A. I say along the 10th, about that date, it may have been the 10th of September or the 10th of October, I think it was the 10th of October.
Q. Well, whichever it was, has any work been done there at all since?
A. No, sir.
Q. Has any work been done in Cumberland Sound since?
A. No, sir.
Q. What has been the chief work of the office force of Captain Gillette since that time?
A. Well, they have been working on map work.
295 Q. Would it take all that time to draw a map, all that time?

Judge-Advocate: I would like to ask if the witness knows what the office force has been engaged on.

A. I have not been in the office but a very short time.

Q. Where have you been?

A. I have been at Tybee, engaged on the work down there.

Q. The fortifications?

A. The fortifications.

Q. Well, the few times that you have been here and been in there, what has that office force been employed on?

A. They all seemed to have been busy.

Q. Have not they been busy looking up evidence in Captain Carter's case?

A. I suppose so.

Q. Every time you have been there, has not that been the general work they have been engaged in?

A. They seemed to be working on maps.

Q. Working on maps of the work of Captain Carter?

A. Working on the plans of the fortifications and business relating to the rivers and the operation pertaining to all matters connected with the district. I could not give you the details of the business because I dont know, my work is in the field, if you want that you must ask some one else, I dont know.

Q. Have you devoted some of your valuable time to looking up the case against Captain Carter?

A. I have looked up some facts, I was told to do.

Q. Who told you to do that?

A. Captain Gillette.

Q. Were you brought up from your labors at Tybee?

A. Not that I know of.

Q. How did you come up without being sent for?

A. If I was sent for I came up.

296 Q. Were you sent for?

A. Some times, yes, sir.

Q. Were you sent for?

A. Some times.

Q. For that purpose? To look up this case against Captain Carter?

A. I dont know that I was sent for to come up for that purpose. I may have come up for other purposes and was then given some of this work to do.

Q. Will you look at that and see if you can tell us what it is meant to represent—Before you answer that question—

Mr. Charlton (To the Judge-Advocate): Colonel, I asked

the witness if he could identify what that was meant to represent.

Judge-Advocate: Certainly.

A. This sketch represents a couple of cross sticks, evidently for the purpose of choking a fascine, I never saw the sketch before, if that is what you show me, the answer is; that that is what I would understand from the sketch, I dont remember of seeing it before. It is a choker for fascines.

Q. Would you regard that as an efficient choker?

A. I should think so, yes.

Q. Have you ever seen the choker that is used in this vicinity by these contractors?

A. I have, yes.

Q. Is it stronger or weaker looking than that?

A. I have not any distinct recollection as to that and would not like to state, I have seen them, but didn't especially notice them at the time. It would not be fair for me to say whether it was easily stronger or weaker, I dont know.

Mr. Charlton: We offer this in evidence.

Judge-Advocate: This will be attached to the record and marked "Defense Exhibit No. 7".

Q. Will you kindly look at that drawing and see if you can tell us what that represents?

297 Well it may be taken to represent a bundle of brush, or it may be taken to represent a bundle of weeds.

Q. Assuming it would be taken to represent a bundle of brush, have you ever seen anything like that before, any such bundle of brush as that?

A. I think so.

Q. Where?

A. I have seen some in the works here, I think even as good as that.

Q. Even as good as this?

A. Yes.

Q. Well, do you consider that a fascine?

A. No, sir, I should call that a bundle of brush, I suppose that would be described as a bundle of brush trimmed and choked. I should judge by that sketch that that has been some brush that was cut and the biggest part of the limbs trimmed off and the smaller brush and branches left on and choked. that's my understanding of that sketch.

Q. It could by any imagination be made to represent a fascine?

A. That is not a fascine, as I understand it.

Mr. Charlton: We introduce this in evidence.

Judge-Advocate: That will be attached to the record and marked "Defense Exhibit No. 8".

Mr. Charlton: I notice in your estimate of the cost of the first design of the construction of the mattresses of the first design of the specifications that you have labor put down at a dollar and a half a day, whereas in the others I think you had it down at a dollar a day and 75 cents a day.

A. Excuse me, only a part of that labor on that estimate is a dollar and a half a day. You see the labor is paid all the way from a dollar and a half to $1, and 75 cents a day, depending upon the class of work they had to do.

Q. I see the item is this: Building mat, labor $1.50 a
298 day, $43, that is very hard work, the men have to be engaged in the water up to their waist all day and you cant get men to work in those conditions without paying them for it, they work for less money on land than in water.

Q. What experience have you had in building log mattresses, personal experience.

A. In building a log mat?

Q. Yes.

A. I had three or four years experience with log mats, I never built any.

Q. You never paid for the building of any?

A. Never did.

Q. That's all guess work?

A. Not guess work, no, sir, I dont understand it that way. I have had experience with log mats and know what they are, and, of course, have some idea of what it would cost to build them.

W. When did you find this bundle of brush that was brought up here, that you claim to have found upon Tybee Beach, when did you find it?

A. The date?

Q. Yes, sir.

A. I think it was some time in September.

Q. Last September?

A. Yes, I can look up the exact date in my journal if you with it.

Q. Just simply the approximate date; and the first you saw of it was there on the beach, was it not?

A. As far as I know, it was. It may have been some bun-

dles that came out of those mats that I sunk on the breakwater.

Q. That you dont know, you dont know where it came from?

A. I do not, I do not.

299 *Re-direct Examination.*

Questions by the Judge-Advocate.

Q. Mr. Cooper, you have been testifying as to the estimate made by you of the cost of the manufacture of the mattresses of the different types, which do you consider the most expensive types of the three designs mentioned in the specifications?

A. I would consider it more expensive to build the log mats, that is Design No. 1, on account of the heavy material in that mat, it costing more to tow it. Design number 1 has to be towed while the mat is in the water, it cannot be placed in the water. In designs number 2 and 3, that is where the distinction comes in design number 1. Design number 1 has the logs built into the mat and it remains in the water until it sinks in the works.

Q. In addition to the cost of construction it would be the cost of transportation to the place where it was to be sunk?

A. Yes, sir.

Q. What would be the relative cost of manufacture and transportation of type number 1 per square yard and the relative cost of transporting the 8 course mattresses ready to be sunk in place per square yard?

A. Do you mean that both of them, or all of them are to be constructed according to the specifications, or as they were going in the work?

Q. The mattress I am speaking about is the mattress you have testified as having been put in the works, the 8 course mat.

A. My estimate for the 8 course mat was 9 cents a square yard in place, that is the actual cost, without figuring any profit or any risk to the contractors, and the first design for log mats, according to my figures, would cost 55 cents, 55 and a half cents I think it was per square yard in place, without figuring and profit or risk to the contractor.

300 Q. And that would be one mattress instead of 8?

A. Well, that is per square yard. that estimate was made on a basis of a mat which contained 2000 square yards

and the total cost of the mat was divided by the 2000 square yards to arrive at the cost per square yard.

Q. Exactly. Now, as to type number 2 of the designs, how much different do you think that would be?

A. In the cost of construction, in the type number 1, and number 2. The cost of number 1 and 2 is very little 2, I estimate number 2 at about 50 cents per square yard in place.

Q. Now, as to the cost of number 3, according to the specifications

A. I made a computation of that of 30 cents per square yard in the same manner.

Q. The advertisement calling for bids called for one bid, as I understand, one price for the three types of mattresses?

A. I think it did, I was not here when they were advertised, and only know that from hearsay.

Q. You have seen the specifications?

A. The specifications say that. Yes, I believe it does. It says one price will be estimated for all three designs.

Q. How was it determined which type of mattress should be used?

A. That was determined by Captain Carter.

Q. According to the terms of the specifications?

A. You could not tell by the specifications.

Q. No. That question of determination I am upon now, according to the terms of the specifications?

A. The specification does not specify which design will be used.

Q. But that the design to be used should be at the option of the Engineer in charge?

A. At the option of the Engineer in charge.

Q. You were shown this book of regulations for the government of employees of the United States Ebgineering
301 Department, and your attention called, I think to the last section, the paragraph was 96, "He must thoroughly comprehend the specifications and his general instructions". To whom does that refer?

A. That, I believe refers to inspectors and engineers in the field.

Q. That is the specifications and his general instructions?

A. Yes, sir.

Q. What is your understanding of the meaning of general instructions, in addition to the specifications?

A. General instructions would be instructions received at any time from Captain Carter, either verbal or written.

Q. And under the first of those requirements you would be governed by such instructions as he gave them, notwithstanding you had the specifications in your hands?

A. If I had instructions countermanding any one order in that book even if it was verbal, I would carry out the instructions.

Q. And consider yourself justified by the terms of the requirements?

A. Consider myself justified in carrying out the last order given in all cases, no matter whether verbal or written.

Q. Did you even see these regulations?

A. I was on the work three months, when I came back the last time before I knew this book was in existence. My first recollection is, when asked by Captain Carter why I disobeyed a certain paragraph in that book.

Q. Do you recollect the paragraph?

A. I think it was paragraph 25.

Q. If that is the paragraph, please read it.

A. That's right, 25.

Q. Read it please.

A. "In case of the transfer of property, duplicate receipts will be executed, one of which will be forwarded to this office, the other to be retained by the transferrer". There was a case where I transferred property and simply took one
302 receipt and didn't forward a copy to the office. My attention was called to it and I was asked why I violated this regulation, that is the first I knew the book was in existence.

Q. Now, Exhibit No. 1 for the Defense, submitted to you yesterday in that there is a deduction made. How did it happen that that account was stated and then the deduction made thereafter?

A. This mat was received on the works and measured and of course, we not knowing but what it was going in the works —the may was dumped overboard and the attempt made to sink it, and the mat went to pieces, and, of course, didn't go in the works, and we could have either put that in our report or not. In some cases of that kind they didn't go into the report at all, in this case it did go in the report and the cost diminished, but I would not look on that in the light of a deduction, it was not a deduction in the proper sense of the word, it is simply taking out material that didn't go in the works, there is no recommendation for a reduction, it is simply in the report as what did not go in.

Q. What is the object of those reports, what is their purpose?

A. To convey to the Engineer Officer in charge the exact amount of material placed in the work by the contractor.

Q. As a basis for the adjustment of accounts?

A. The adjustment of accounts as to whether they were paid or not I am not supposed to know.

Q. Could that mattress, which went to pieces, referred to in that Exhibit No. 1, have gone to pieces had it been constructed according to the language of the specifications mentioned in the contract?

A. I could not say, I do not remember just exactly why thst went to pieces. It may have been very bad weather, if it was very bad weather it probably would have gone to pieces anyway.

Q. That is, you have seen storms of such violence that they would destroy any mattress?

A. They never attempted to sink them in bad weather,
303 in case the weather is very bad. Some times they will go out when the weather is threatening and when the sea is very high and take the risks rather than lie idle.

Q. Do you recollect the conditions when that mat went to pieces?

A. I do not, there were seven cases in which mats went to pieces, I cannot recall which special case this was.

Q. How many of those 7, if any of them, could have gone in the works under the nature of the stress in which they were placed and in which they went to pieces if they had been properly constructed.

A. I think the probabilities are that the majority of them would have gone into the works if they had been properly constructed, possibly all of them, but I could not state that.

Q. Did you know, while acting under the instructions of Captain Carter whether any modifications of the types of mattresses called for as specified had been made.

A. I was not notified, of any change in the form, if that's what you mean.

Q. There was no agreement in writing made known to you of a modification of the terms of the contract?

A. No notification of a modification was made known to me while I was in charge under the contract of '92 or '96.

Q. Do you know who got up these regulations, of your own knowledge?

A. I was told—

A. No, of your own knowledge?

A. I do not.

Q. Did you have occasion to make frequent reference to them?

A. I paid very little attention to those regulations, I dont remember of reading them over more than a couple of times while I was on the works since I came back in 1893.

Q. Have you received a copy of them since you returned in '93.

A. I received a copy some months after I came, I think it was given to me by Mr. Sterly, the clerk of the office,
304 I have been told since that I gave a receipt, but it made no impression upon me at the time. I have forgotten.

Q. Have you ever had a conversation with the accused in regard to the regulations?

A. Printed regulations?

Q. Any conversation I stated about the regulations?

A. About the printed regulations?

Q. Yes, this book.

A. I dont remember ever speaking to Captain Carter about the printed regulations.

Q. Upon any other occasion that that which you have testified, did he call your attention to the regulation?

A. Possibly he might, I dont remember, sir, if he did.

Q. You dont quite understand, yesterday, Mr. Cooper, in answering a question by Mr. Charlton whether you spoke of doing wrong rather than resigning, did I so understand you?

A. I did not say that.

Q. What did you say?

A. I said I obeyed orders, that I did not think were proper orders to give rather than resign. I think that was my answer.

Q. Well, did you consider that you were doing a wrongful act when you made out the reports in the manner in which you did?

A. I did not, I was obeying my orders and my instructions. I considered the man that gave the order was responsible and not the man who executed the order.

Q. You were yesterday shown an estimate made by you in which you had embraced the sum of $25,000 to be used in lobbying the appropriation bill through Congress, in that estimate, was not that in the interest of the contractors, enlarging the cost of production?

A. Of course. That Item I knew nothing about, it is simply hearsay.

Q. You do not quite understand me, was it in effect, that embracing of that large sum in the estimate, was it not
305 in the interest of the contractor, and so as to increase the cost of manufacture?

A. Oh, yes, that would increase the cost of manufacture, I could have left that out and the cost would have been less.

Q. It was in the interest of the contractor that that cost appeared in the estimate?

A. Yes, sir, in that respect, yes, sir.

Q. You also left out loss involved on account of storm?

A. I made an estimate of the loss during the entire 3 years, there had been a loss of but one mattress that I recollect.

Q. Then, might that same $25,000 in the estimate charged to the lobby account be taken out and charge it to storms, and then the estimate would be the same as you spoke of here yesterday?

A. That would more than replace it.

Q. You were testifying yesterday in reply to some questions from Mr. Charlton as to the specific gravity of the different stones, what was the sinking power of the stone of the lightest character.

A. That stone would weigh, the sample you have in your hand would weigh 84 pounds to the cubic foot, that is in water, but this stone being very porous, if it was coated with a coat of parafine or any substance impervious to water would actually float because that stone dry would only weigh 56 pounds a cubic foot, and a cubic foot of water would weigh 62 and a half pounds a cubic foot, it would therefore float.

Q. Then, Mr. Cooper, if I understand you rightly, stone of this character only sinks when placed over the works when it becomes saturated with water?

A. When it becomes saturated with water.

Q. Have you ever seen any of it float?

A. I have seen a half a dozen samples float about a quarter to a half a minute; if thrown overboard it would only sink when the air became replaced with water.

Q. What is your understanding, as an engineer, of
306 the meaning of the term used in the specification about stone of a certain specific gravity to be used to hold down mattresses upon that work. What would the term "specific gravity" refers to?

A. Specific gravity is a relative term. It means the relation of that stone to water, and water being the unit, the weight of stone would be more than the unit, the character of the stone specified would be 2.4, that is, the weight of the stone would be 2.4 time the weight of water, that is what I mean by specific gravity.

Q. That is the stone as delivered and sunk?

A. Yes.

Q. You speak of barnacles attaching themselves to stone, they do that on any kind of stones, dont they?

A. That depends upon the time of year the stones are placed in water, if the stone was a very soft stone, for instance, to illustrate, if you place two stones in water, one very rough and one very smooth, if that is done in September, or the early part of the winter, no oyster shells will attach to them until after the following August, which would be nearly a year. In the meantime the rough stone would be coated with mud and the smooth stone would gather less mud, then, when the oysters became attached to the smooth stone they would stay there, and when attached to the rough stone they would fall off on account of the mud, in other words, the rough stone would gather mussel better after Christmas.

Q. Did Captain Carter ask you to make a test of the stones used in the works under the contracts?

A. He did not.

Q. These two sketches that were shown you, number 5 and 6, you could have been able to pass much better judgment upon them had photographs of the objects been shown you, could you not?

A. I could.

Q. You spoke yesterday of military fascines, does it make any difference whether a fascine is a military fascine or not, if it is according to the specification?

307 A. I do not see that that would make any difference, the term "military fascine" does not occur in the specifications, they are described accurately. You are supposed to go by the description given in the specification.

Q. If you were writing specifications for what you understand to be military fascines, would you write them any different from the specifications of the contract of 1896 for the Savannah Harbor?

A. I might possibly specify more particularly about the trimming. The choking is clearly stated but you might be

more explicit as to the trimming, that simply says "well trimmed", there might possibly be some misunderstanding as to what that meant.

Q. As to the definition of "well trimmed"?

A. Well trimmed, yes. That probably might be expressed more explicitly in terms that could not be misunderstood.

Q. You spoke of sounding the mattresses, what do you mean by that?

A. Sounding?

Q. Yes.

A. In this case that I speak of, I would take a pole, say a pole 10 or 15 feet long, and shove that down between the bundles of brush in order to ascertain whether the center tiers of brush were properly packed, or whether they were there at all or not, that's what I mean. I did not mean sounding after it was sunk, I mean feeling of it before it was sunk.

Q. That is the mattress itself?

A. Part of the mattress was covered, the top course and the sides, I could not see it, and the pole was used to give me as accurate an idea as I could obtain by using the pole from outside the mat.

Q. Could you run a pole through one of those 8 or 10 course mats?

A. Always, you could always run a pole down.

Q. You would have to be particular as to the spot?

A. You had to be particular as to the spot, but you could always shove the pole clear through the mat.

308 Q. Could you tell by such sounding whether the mat was full of bundles of brush or loose brush, or some other material?

A. You could not, absolutely, you could simply form an opinion by the use of that pole. If you could not put the pole down very easy you could naturally infer there was a good deal of material in there, but as to what the material was, you could not tell by the pole.

Q. There was no other means unless the mattresses were inspected during the course of construction?

A. The proper inspection would be to have a man upon the grounds to see each bundle of brush and each pole put in the mat, I could not tell when the mat was delivered to me on the works what it was made of.

Q. Then the proper place of inspection of those mattresses was the mattress camp where they were constructed?

A. Yes, sir.

Q. In those reports to which you testified yesterday, there is a heavy design of mats, what does that refer to, what designs does that refer to?

A. In nearly all cases, to the third design as put in those blanks. The blank form given me to fill out as the heading designated as design of mats. In that column there is a space, probably a quarter of an inch, there is no opportunity to describe accurately how each mat is constructed, but simply to put in there some one short word that would give some idea as to how the mat was constructed, those mats were to be modelled after the third design, so the third design was placed in there to indicate some other part or method of constructing that mat. That does not mean that all of the details were followed out of the third design in making that mat, it simply means that that was the plan upon which the mat was built.

Q. It was not then a certificate or statement that the mat had been constructed in accordance with the terms of the specifications?

309 A. I did not understand it that way, it was simply a descriptive term.

Q. For whose information were those reports made?

A. They were made for the information of the Engineer officer in charge.

Q. He would understand what was meant by that?

A. Yes, sir.

Q. The specifications he handed to you of those contracts provided for modifications for the several designs?

A. There is a clause in there providing for modification, yes, sir.

Q. And you never received any information that a modification had been made of the express terms of the contract?

A. I did not.

Q. How often did you submit those reports to the accused?

A. They were submitted every 10 days or three a month.

Q. Then to repeat a complete description of the changes made each 10 days would have involved a repetition?

A. Yes, sir.

Q. In the contract of 92, what proportion of the mattresses were of the character that you have described as 8 course mattresses?

A. You mean of the third design?

Q. Yes, and of the kind actually used under the printed characters as to the third design?

A. That question was asked me as to the correct class yesterday, I had at that time forgotten, I remember now distinctly how they came to be put the second design. There were some mattresses constructed not in accordance with any design, but it resembled the second design more than it resembled any other, for that reason it was put down in the description "second design", but they were not in accordance with the second design, but resembled that closer than any other design.

Q. Well, what proportion of the mattresses of the 310 standard adopted by Captain Carter were put in under that contract?

A. They were all put in by the standard mentioned by Captain Carter.

Q. Have you ever seen the first design used in the Savannah Harbor or Cumberland Sound?

A. When I first came here in 1884, the mats were all built of the first design. It prescribes that enough brush shall be placed on the top of the log raft to make a layer 6 inches thick in the finished work.

Q. What is meany by "finished work".

A. It means that the logs must be covered by a layer of loose brush of sufficient thickness so that if the rock is placed after it is sung the brush and the binder poles along with the brush will be 6 inches thick.

Q. What thickness of brush was actually used to secure this 6 inches in the finished work?

A. In some instances it is as great as 6 feet.

Q. How would the quantity of brush in such a layer compare with the quantity of brush in a single layer of 8 course mattresses built in Savannah harbor during the contract of '92?

A. That is provided the layers were equal?

Q. Yes.

A. If the requirements of both were carried out strictly to the letter I think the brush would be greater, or do you mean according to the specifications, or as put in the works.

Q. As put in the works, how would the quantity of brush of that one you have described compare with the quantity of brush in a single layer of an 8 course mattress?

A. I think the amount of brush actually used in the work in the mats of the first design and the amount of brush

actually used on a single mat of the third design in the three works were very nearly equal, possibly a little more in the third design than there was in the first design.

Q. The proponderance, if any, would be on the side of what?

311 A. Of the third design.

Q. I mean, that is, as actually constructed?

A. That is what I spoke of, the actual construction in both cases, in case of the first design, which would be the style prior to 1888, in the case of the third design, which is used subsequent to that I think the preponderance of the brush would be a little bit in favor of the third design actually used in the work.

Q. In making use of the third design, do you mean mattresses actually sunk or the mattresses as specified?

A. I understood your question to mean the mattresses as actually sunk?

Q. That is what I meant?

A. Yes.

Q. The same provision was in that contract as to the bids, bidding one price for the three separate designs as in the existing contract?

A. You mean in that contract of 1884?

Q. No, the '92 contract that you are testifying about, that the same price should be bid for all three separate designs?

A. Yes, the same price should be bid.

Q. And the type to be used at the option of the Engineer Office in charge?

A. The types to be used to be at the option of the Engineer Officer in charge.

Q. What position did you first occupy under the accused, Mr. Cooper?

A. I occupied the position of topographical assistant, general service detachment, Department of the Missoura.

Q. Then you were in the Army, a part of it at the time?

A. At that time I was an enlisted man in the Army.

Q. And you subsequently joined the accused? Was it at his option or did you solicit his employment.

A. He wrote requesting me to report to him at Savan-

312 nah for duty as his inspector on the work here.

Q. And your subsequent employment under him was that under the same circumstances, at his own request?

A. My first employment was procured in this manner; Captain Bailey, or Lieutenant Bailey, as it was then, was

Chief Engineer of the Department of the Missoura. He advertised for topographical assistant, I answered Captain Bailey's advertisement, and in the meantime Captain Bailey was transferred to Charleston and Captain Carter was appointed Chief Engineer of the Department of Missoura, Captain Carter picked out my application and sent for me, that is the way I first came in the service.

Q. I am referring to your subsequent employment, Mr. Cooper, from time to time, if each time you have returned to the service of the Government, if it has been at his request and invitation.

A. In all cases.

Q. How as to your compensation, has it remained the same in each employment?

A. It was increased all the times except one, I was sent for four times, three of those times my pay was increased, in one instance it was not increased.

Q. How about your last return to the service under him?

A. My salary was increased.

Q. By how much.

A. It was increased from 175 to $200 per month.

Q. Which you have continued to receive since that time?

A. I have continued to receive up to the present date.

Q. Mr. Cooper, you were asked yesterday as to when your changed views were experienced in relation to the manner in which business had been done in these improvements in this District?

A. In regard to what?

Q. In regard to the manner in which the business had been transacted here, and the character of the work, and the manner in which you characterized it after Captain Gillette arrived and before?

313 A. After Captain Gillette arrived the work was done in strict accordance with the specifications.

Q. No, you dont understand me, you were examined as to when your change of views took place under which you characterized the work in different terms from what you had characterized it before his arrival?

A. It was shortly after my return in 1893, I could not place the exact date, it was somewhere in 1894 or 5, somewhere along there.

Q. And any views that you now entertain or express in relation to the mattresses more particularly had been entertained before you ever saw Captain Gillette?

A. Yes, sir, some time before.

Q. Did you receive a letter of instructions from Captain Gillette as to how your business should be conducted?

Mr. Rose: Let him answer the question yes or no.

Mr. Charlton: If the witness received instructions from Captain Gillette, if oral they are not admissable, if in writing that should be first submitted to us.

Judge-Advocate: It is in response to the line of investigation yesterday, it seems to me. Showing that he only became aware that things were not going properly after he received information from Captain Gillette.

Mr. Charlton: He testified yesterday he knew all along they were not going according to the specification right straight along.

Mr. Blair: We will object to the introduction of that letter if it is your purpose to introduce it, do you offer it Colonel?

Colonel Barr here asks the witness if he remembers such a letter.

Witness: I remember the letter.

Judge-Advocate: This is a letter dated August 6, 1897, from Captain Gillette to Mr. Cooper conveying certain instructions to which the counsel objects.

The President: State the objection.

Mr. Blair: Colonel Barr has not offered it.

314 Here Judge-Advocate starts to read the letter.

Mr. Blair: We object to reading it.

The President: State the ground of the objection.

Mr. Blair: That seems to be a letter, if the court please, addressed by Captain Gillette to this witness, the 6th day of August, 1897, after the accused left Savannah and was relieved from duty at Savannah, now nothing that Captain Gillette can say, or this witness, or anybody else can be binding evidence upon this accused. We submit that this is not the proper way, the legitimate way, to build up the testimony of this witness. The declaration of Captain Gillette made out of the hearing of the accused and not acquissed in by him is not evidence of anything. The mere fact that Captain Gillette gave this witness instructions on the 6th of August may be relevant to the case, but the nature of those instructions we submit has nothing to do with the charges here either. This officer is charged with various derelictions of duty, which occurred, if they occurred at all, long before August 6th, oc-

curred of course before he left here, about the middle of July; now, we submit, respectfully, that nothing that Captain Gillette could say or do after the accused had left here and after the offense had been fully committed, if they were committed at all, can have no bearing whatever upon this case. Moreover, if the letter of instructions contained instructions of Captain Gillette to this witness as to his method of conducting the work, as to the specifications under this contract the letter cannot be in response to anything we brought out because this witness testified yesterday, and again to-day, that as far back as 1893 he knew that the work was not being done in accordance with the specifications.

Judge-Advocate: The proffer is with-drawn.

Q. You testified, Mr. Cooper, in regard to a statement made by you before the Board, what board did you refer to?

A. The Board of Engineer officers sent down here to 315 investigate the charges made against Captain Carter.

Q. In regard to "boosting" along the accused?

A. Yes, sir.

Q. On what did you base that?

A. Simply matters that I had heard.

Q. You used the same expression elsewhere?

A. Not that I know of, I dont know that I ever used that expression before, except to Captain Gillette.

Q. Was that in a letter, or did you state it to him.

A. I think it was in a letter.

Q. Is that the letter?

A Yes sir.

Here the letter is handed to counsel for the accused.

Judge-Advocate: I propose to read this.

Mr. Blair: We object, if the court please.

The President: State the objection.

Mr. Blair: This is a letter dated August 7, marked "Personal", addressed to Captain Gillette by this witness, it contains various statements with respect to Captain Carter. We submit that that is not admissable. If the witness has any statements to make with respect to Captain Carter he is here under oath, let him make them in answer to relevant proper questions addressed to him by counsel, but extra-judicial statements not sanctified by oath, private correspondence between him and Captain Gillette have no business in this case. They are not any admission to bind this defendant in any way shape or form, the letter, moreover, is not in response to anything elicited in the cross examination of this witness. If

pertinent to anything at all brought out it is pertinent to the question asked this morning as to "boosting" the accused along and getting him his details at London and on the Nicaraguan Commission. The court will remember that the questions which were addressed to this witness in that regard were "did he make a statement in the hearing or in the presence of any other person", that question has
316 nothing to do with any letter which this witness may have written, therefore we submit under no conceivable rule of evidence is the letter admissable, it is an expression of personal opinion only by this witness.

Judge-Advocate: I will asked the witness one question in regard to this before I offer it.

Mr. Blair: Very well.

Q. Why was that letter written?

A. That letter was written because Captain Gillette wrote me a letter requiring me to answer certain questions.

Q. An official communication?

A. An official communication. I did not want to answer those questions and I wrote that letter for the purpose of avoiding those questions.

Judge-Advocate: I offer this letter in evidence for the one single purpose of showing the condition of the mind of the witness at the time when he had just come in the service, and it was not a new condition of mind, that Captain Gillette's presence had not engendered those thoughts and those views, and that he hadn't changed his views by reason of anything done by Captain Gillette.

Mr. Blair: Here is the witness under oath, if there is any fact within his knowledge, any change of heart, and practical theory he entertained with reference to this case let him answer a pertinent question put to him, that is the way we elicit evidence in a court of justice.

Here the Court at 12.00 o'clock, noon, retires to an adjoining room for consultation, after which, at 12.17 o'clock P. M., the Court having returned and the members of the Court resuming their seats the Court was open and the President, in the President in the presence of the accused, his counesl, the Judge-Advocate, and the reporter announced—

By the President: The court sustains the objection of the accused.

317 Judge-Advocate: Mr. Cooper, you testified that the value of the mattresses, as placed in the water under those contracts was 9 cents a square yard?

A. Yes, sir.
Q. What was the contract price?
A. I think it was 95 cents.
Q. That is in the Savannah Harbor improvement?
A. Savannah Harbor contract of 1892.
Q. What was the contract price under the contract of '96?
A. As I remember it that was also 95 cents.
Q. 95 cents is the price of each contract?
A. Yes, sir.

The President: Any member of the court desire to ask a question?

By a member: I would like to ask the witness if at the commencement of his service under the contract of Savannah Harbor Captain Carter read with him the specifications under that contract and asked him if he clearly understood them.

The President: There is no objection, the court will offer the question.

A. He did not.

By a member: I would like to ask if he read any specifications used in the contract before entering upon the execution of the contract with the witness.

The President: Adopted by the court.

A. He did not.

By a member: I would like to ask if the witness clearly understood all the requirements of the specifications under that contract.

By the President: Adopted.

A. I think I did.

By a member: I would like to ask if he understood why the specifications required the brush to be trimmed, well trimmed, in making the fascines.

By the President: Adopted:

A. As I understand it, that is involved in the reason
318 why trimmed brush or military fascines should be placed in the work, or simply the bundle brush; is that correct?

By the Court: No; I want the question answered why the specifications required the brush to be well trimmed in making a fascine in hydraulic construction.

A. I consider the brush well trimmed would be preferable; for the work would build up more for each course where height was desired, and it would make a firmer and better foundation, where the foundations were required.

By the Court: I would like to ask if the brush was well

trimmed at any time, while making any fascines in that con tract of 1896?

By the President: Answer that.

A. They were not, to the best of my knowledge and belief.

By the Court. Have they ever been well trimmed, under any contract which the specifications stipulated that they should be,—in this district?

A. Not in the fullest meaning of the word "well trimmed." Some of them were trimmed; but as I understand the meaning of the word "well trimmed," they were not.

Q. Did that requirement that the brush should be well trimmed increase the price for making the mattresses?

A. I should say that it would; most decidedly, increase the price. It involved labor; it involved expense; it involved more labor in cutting brush, and more labor in cutting and binding and choking

Q. I would ask if it increased the price, why it was retained in the specifications to the succeeding contract?

A. That I could not answer. I had nothing to do with preparing the specifications. My work was in the field; I never was consulted as to what the specifications would specify. The specifications were given to me as completed. I had nothing to do with their preparation, and was not consulted as to how they should be prepared.

By the Court: I would like to ask if Capt. Carter never expressed to the witness to make any suggestions as to
319 how the cost of the work could be cheapened and its efficiency retained at the same time.

A. He asked me some question as to how it could be cheapened in the matter of using less rock on the mattresses in some instances, and as to other details; but never as to the specifications; simply the details as to the field work. I was often consulted as to the field work, and to its methods as to carrying on the field work, but not to the specifications.

Q. I would like a statement as to what those details of field work were.

A. I mean by field work the sinking of the mats, and the determination of the proper amount of rock to place on each mat, and in general, the best methods of constructing dams, spur dams and training walls.

By the Court: I would like to ask how many of those mat-

tresses were used in more than one course, piled in more than one course.

A. How many mats?

By the Court: Under the contract of '96, Savannah Harbor.

A. I think there was—

By the Court: What proportion of them?

A. There were 133 parts; that would be 125 mats. 125 mats went into the breakwater, but 4 of those mats were a single course mats, that would make 121 mats, 3 course mats, used on the contract of '96.

Q. Were any mats laid in more than three courses?

A. Not in the contract of 1896.

By the Court: Now, I would like to ask what would be under the specifications, the entire height of a mattress in one course.

A. A mattress of one course, according to the specifications of design No. 3, would be 25 inches, using the figures mentioned in the specification; but there are practical points that come in there, that might increase that, for instance—the specifications say a pole shall be 3 inches at the small end and 5 inches at the large end; in cutting poles it would be more than likely they would average more than 4 inches, that is, would cut some poles that would be 3 at the small end and they might be 8 at the other end. You would therefore, average more than 4 inches. In constructing the fascines, the specifications say they shall be 9 inches in diameter. In that case, in order to secure 9 inches, you must have more than 9 inches; your probably would in that case. I mean that both figures under specifications would call for 25 inches, and you would practically get two feet and a half or 30 inches. I simply give that as my opinion, but the specifications say 25 inches.

320

Q. Then if a mat had been constructed according to the specifications, a single course would have been 25 inches in height?

A. According to the specifications, yes sir.

By the Court: In the two course mattresses made from the poles, one met on the other, would have made what height?

A. That would have made 4 feet and 2 inches, minus 4 inches, because you lost the height of one pole.

By the Court: Then, as I understand it, the top pole in the top grillage of the bottom mat, is parallel to the bottom pole of the lower mat?

A. Yes, sir.

By the Court: And the lower poles of the upper mat lie between the top pole of the lower mat?

A. Yes, sir.

By the Court: And that takes off four inches?

A. Yes, sir.

By the Court: So that the lower mat was 25 inches in height, and the next mat 21?

A. Twenty-one; that is correct, according to the specifications.

By the Court: Now, then, the three course mats according to the specifications, would have been how high?

A. On that basis?

By the Court: On that basis.

321 A. That would be 5 feet and 7 inches.

By the Court: Now, taking your testimony of yesterday, you said you were instructed by Captain Carter to accept certain heights for certain mattresses of certain courses?

A. Yes, sir.

By the Court: What height were you instructed to accept for mattress three courses high?

A. 4 and a half feet, as I remember it. I have not got the list with me, I think that is it. It is on record, however.

By the President: Could you state a little more definitely if you had memoranda from which you testified as to the height?

A. Yes, sir, but I have not the memorandum with me. I think that is right. (here the height of a four course mattresses is read from the record of yesterday). I think that is right, it was 5 feet, I think that is the height given in my list.

By the court: That is 7 inches less?

A. 7 inches inches less than the exact measurement would give.

By the court: That is a seven course mat?

A. A three course mat.

By the court: A fourth course mat was 5 feet according to his memorandum yesterday.

By the Court: Were any four course mats built?

A. I think there were, there were very few, that is in the contract of '96, there were none in the contract of '96.

By the Court: I would like to ask if the training walls that were built with mats of the character which has been de-

scribed retained their height or if they settled so that additional brush had to be added.

A. You mean back of the contract of '96?

By the Court: In the contract of '96.

A. I think in the breakwater that the mats settled nearly a half when the rock was placed on them, in some cases more than that.

By the court: That was at sea, in the ocean?

322 A. In the ocean, I cant say whether that was all due to the added weight of the stone, or part due to the action of the sea and storms displaced some of the brush, I think probably the displacement of some of the brush had something to do with that.

By the Court: How about the training walls in the river in fresh water?

A. The settlement?

By the Court: Yes?

A. I think in the river, in the Savannah Harbor, the amount of height gained for each course of mat would average a little less than a foot in the finished work, it varies in different places, in some places it would be considerably less, in other places it might possibly be a foot, but in no instance, have they gained more than a foot in height from the brush mattresses put in the work, executed under that contract. In the first design mat the average gain is 2 and a half feet, that is the result of experience in constructing a log mattress, or spur dams of log mattresses.

By the Court: Under former contracts, I would like to ask how training walls built of mattresses retained their height and where additional brush had to be placed in order to retain the heighths.

A. In some instances additional brush had to be placed on them, and in some cases additional mats had to be placed on them in order to bring them up to the top.

By the Court: I would like to ask, where they have been made, if they have been made of tightly choked fascines, would renewals have to be made in the river where there is no teredo?

A. In some instances probably there might be but not in such extent as they did occur. In some instances where the water was deep a possible addition would have to be made if the work was made of tightly bound fascines. In shallow water I dont think they would have to be made where constructed according to the specifications.

By the Court: When you speak of shallow water, what do you mean?

A. 3 to 7 feet.

323 By the court: Then is not it a sound conclusion that the mattresses made of properly choked and compact fascines make a more serviceable and durable training wall than bundles of brush like those on exhibition here?

A. Decidedly better work and cheaper work, provided the cost of brush be at the same price as the cost of fascines, then the fascine is much better, I do make this point, if these mattresses were paid for at their proper cost, allowing a reasonable profit to the contractor, then I believe those dams would have been cheaper than if constructed as fascines because you have so many more yards for the same price, but price for price, the fascines were at least half as cheap as the other. It would cost at least half as much to build a dam. I mean both mats being paid for at the same price per square yard.

By the Court: Under the contract of 1896, the money paid for the fascines of the character that were put in the training wall, if I understand it correctly, a much more durable training wall could have been obtained and one that would have cost less for maintainance?

A. Yes, sir, that's right, that's my understanding of it.

By the Court: The specifications require that the contractor shall be present on the works, or be represented, or have a responsible representative, who was that responsible representative under the contract of 1896 in the improvement of Savannah Harbor?

A. Edward H. Gaynor was the superintendent in charge of the work.

By the Court: Was his attention, of your knowledge, ever called to the deviation of the mattresses from the quality required by the specifications?

A. I think it was, repeatedly.

By the Court: Do you clearly recollect any time?

A. Yes, sir, I think I do several times.

By the court: What did he do.

324 A. He would always present the argument, that is usually present an argument in favor of brush in preference to fascines. He would always say he thought they would silt up and do better work. Of course, as I said, that is true, if the proper price, is applied. At the same time, he would make an argument for those fascines—those bundles to be sub-

stituted for fascines, that is usually the answer given, or something similar to that.

By the court: You have stated, you clearly understood the requirements of the specifications?

A. I think I do.

By the court: Did you ever, as an inspector, or as assistant engineer, charged with the details of construction of those training walls make a demand upon that responsible representative of the contractor who was there present that he put in those walls mattresses of the quality required by the contract?

A. I dont think I did.

By the court: Why not?

A. Because I realized that that demand should be made through Captain Carter. Captain Carter was in charge and I was obeying orders. Those mats I saw built were built, as I understand it to Captain Carters satisfaction. For me to require the contractor to put in something better than I was instructed to do would be going beyond my orders, I was to obey orders, not to say what was to be done.

By the Court: You have testified when you first entered the service under the contract of '96 you were shown a mattress and told that that mattress was the character of mattress that was to be accepted in the work under that contract. Who showed you that mattress, and who told you that?

A. Captain Carter was present when the mat was being sunk, and told me that that was the character of the work that he wanted done.

Judge-Advocate: I think you rather mis-state the evidence, it was in 1893 he received those instructions and not in 1896.

325 A. '93, as I understand it.

By the court: I understood it was '96.

Judge-Advocate: No, it was '93.

By the court: How high was this mattress construction carried in the breakwater?

A. Only three courses, some I think 4 feet, and some few 5 and a half, probably a general average of a little less than 5 feet in height for the brush mattresses.

By the court: In your experience as an engineer, on the South Atlantic coast, do you know of any objection to carrying the mattresses as high as that in sea water.

A. Decidedly.

By the court: What is it.

A. Because they would be eaten up by the worms, by the teredo, if this brush mattress were not covered up the worms will eat it up and go into them and honeycomb them and they will become simply hollow sticks with no substance and gradually sink down so there would be nothing to stand.

By the court: Do you know how long unprotected it would last in this quarter of the South Atlantic Coast, unprotected or not covered with yellow metal or creosote.

A. If unprotected it would not stand a year, if it has to stand a strain, if it is not under any strain it will last longer, but if it is under any strain it will not stand any time.

By the court: Do you know how many lineal feet of the breakwater has been constructed in sea water of mattresses of three courses here on the Savannah Harbor?

A. On the Savannah Harbor, breakwater, there has been 7000 linear feet.

By the court: Has any recent survey been made of that breakwater?

A. To take a profile or section? I made a survey of the breakwater October 7, 1897, taking a cross section about every 100 or 125 feet from one end to the other, a detailed sur-
326 vey made by means of two transit men and a little steam boat in the usual manner of making hydrographic surveys.

By the court: Could you determine from that survey the top surface of the brush work at that time?

A. Those notes have been worked up in the office, the profile is a record showing the average height of the top of the breakwater at that date, October 7, 1897.

By the court: Did that show the top surface of the brush construction? under the stone?

A. Well, I could not say that those soundings did, of course, you could not tell whether the lead struct brush or whether it struck stone. It determined the average of the breakwater according to that survey, of course, parts may have been due to the stone and part to the brush. I could estimate closely probably what the destruction had been, I could not tell what the destruction by the teredo had been, I could tell how much of the jetty was there. How it was destroyed, whether by teredo or storm I could not tell without going down in a diving suit and making a minute examination, and that has not been done.

By the Court: Did you make a record of the profile of the jetty as it was constructed, a cross section or cross profile?

A. It is on file in the office, it is of the construction, a profile or plan.

By the Court: Was additional stone placed on it after that survey was made, or before another survey was made?

A. Do you mean the survey of October 7, or the original survey.

By the Court: I mean after the jetty was first constructed, you took a cross profile or cross section of it, I understood you to say?

A. Yes, after the entire work was done, the cross profiles were taken.

By the court: How long was that after the brush had been put in place?

A. The last brush was put in in September of this
327 year, and the survey was made in October, one month after the brush was in place, and there were two barges of stone placed on the dam after my survey at the upper end of the wall.

By the court: Now, on that part of the breakwater, where no additional stone was put?

A. I will state that I had made a report of the survey, I made in the case, giving the average height gained in the breakwater for each individual mat, each of the 125 mats. That report is on file in the Engineer's office, and, as I remember, the average height gained for each mat is less than 2 feet.

By the court: You don't quite understand what I want. I want to know after the breakwater was constructed, down past the brush mattresses three courses high, soon after its construction, if a survey was made of that breakwater showing correctly its profile, its cross section?

A. Yes, sir, that is the survey I refer to, made October 7, 1897, one month after the breakwater was constructed.

By the court: Well, were any other surveys made of breakwaters built earlier than that in former years, built in that way of brush mattresses three courses high.

A. Not in this department. There is a survey made of the work at Cumberland Sound, made in the same manner I made mine, and made after construction, those profiles are on record in the office.

By the court: Now, was another survey made after that at sufficient interval to test the endorance of this mattress structure three courses high?

A. There has been no survey made since October, that is the last survey made.

By the court: October 1897?

A. '97, yes, sir, there has been no survey made since then, but in the river in the previous work there have been surveys made from time to time to show about how much we have gained for each course on the dam, showing how
328 much settlement has taken place. I stated that before, from the best I could, from what I remembered, that the brush mattresses had gained about a foot in height in the works, that is all in the harbor, and the mattresses in the breakwater gained less than that, probably 8 or 9 inches per course of brush mat, and that the log mat increase the height 2 and a half feet, that is the result of my experience 13 years on the harbor.

329 At this point, 12.50 o'clock p. m., W. O. Tarver commenced to report the testimony.

Q. (By the Court) Did you note the depth of the water on top of each mat, and record it, directly after the mat was placed and the stone was placed upon it?

A. I or the Inspector. During the construction of the breakwater a part of the time I was personally in charge; that is, personally supervising the sinking of the mats, but during the greater part of the time, I had an Inspector supervising the sinking of the mats, and I only came about occasionally, but either I or the inspector took soundings on the mats immediately after they were sunk or as soon thereafter as the weather would permit. Sometimes the weather was rough, and we could not take them immediately, but they were taken sometime shortly after the sinking of the mats.

Re-cross-Examination by Mr. Charlton.

Q. What is the character of the bottom of the Savannah River?

A. It has a great many different styles, depending upon the location.

Q. Well, the general character of it; is it mud or sand?

A. In the channel it is in most cases sand, and intermixed with mud and clay and all kinds of bottom.

Q. At the points where the mattresses were put down, what is the general characteristic of that part of the river?

Q. Do you mean all along the harbor?

Q. Yes?

A. In most cases, I think say from Savannah down to Ft. Pulaski, or in that neighborhood, or say to Venus point, it is mainly of mud, and in the locations where the jetties were placed, it is quite soft. A pole in a case of that kind could readily be shoved into the mud four or five feet.

Q. Now, where the Breakwater is, what is its character?

330 A. Very hard sand.

Q. Have you ever happened to observe how far the Savannah River water goes out to sea?

A. I could not answer that in full; I know it goes out quite a good way; I don't know how far.

Q. It does, as a matter of fact, go beyond Tybee frequently?

A. Oh, yes, sir.

Q. Now, in your investigation as to the difference in the neights of these mats as put down, when you did investigate them, are you able to state to this Court how much diminution of height is due to compression and how much to subsidence?

A. You mean how much is due to settlement in the bottom?

Q. Yes, in the bottom?

A. I cannot. I drew a comparison between a log mat and a brush mat, both under the same conditions and sunk in the same place, and therefore the comparison is fair. They would both do to go on a soft bottom—

Q. Now, I would like to ask you the question again; how much of the diminution of the height referred to is due to compression and how much to subsidence?

A. I do not know.

Re-direct Examination by the Judge-Advocate.

Q. If there was compression there must have been subsidence?

A. Not necessarily, if the mats were sunk on a very hard sandy bottom; there would be no sinking into the sand. Then any diminution in the height as determined by surveys would be absolutely settlement. It would be fair to say absolutely settlement if it was very hard sand.

Witness: I would like to ask the Court if I will be given permission to look over my testimony. I make this request, because it may be misunderstood, and I do not wish it

331 to go on the record until I have seen it.

The Court: You cannot look over it in private, but it can be read to you here.

Witness: Some of my statements might have been misunderstood; in fact questions have been asked me by Counsel which showed that they misunderstood statements I made.

Mr. Charlton: If you will call my attention to any of those questions, I will ask them again.

The Witness: That was the question in regard to the second design mats.

Mr. Charlton: I asked you several about that; which one do you desire to correct?

Witness: I don't know that I wish to correct any of them, but from your questions, you didn't seem to understand me.

Mr. Charlton: He does not want to correct his own testimony, but apparently my questions; I don't want to correct my questions.

Judge-Advocate: I think the request of the witness is fair; he wants to see how the questions and answers would be considered together.

The Court: He has the right to have his testimony read.

(The Judge-Advocate read to the witness his testimony of yesterday, Jan'y 20th, relating to mats of the second design, and the witness made no corrections)

Judge-Advocate: (Addressing witness) Do you desire any more of your testimony read? or do you desire to make any corrections in that?

Witness: No, sir; I think that is all right.

Judge-Advocate: If you desire to have all of your testimony read, we will do so.

Witness: I do not know of any specific cases I wish to correct. I made the request thinking possibly some error might creep in, but I could not ask the Court to read it all over.

Judge-Advocate: I am perfectly willing to do so. It 332 has up to this trial been usual in the proceedings of a court-martial to do so.

The Court: (Addressing witness) You have the right to make the demand.

Witness: I do not wish to take up so much time of the Court that might be useless; but a question might have been asked me, and I might have misunderstood it, and have made an answer that would in future, lead to a serious error.

The Court: Do you wish to have the testimony read?

Witness: I think it would be safer as regards errors; but I do not wish to take up so much time of the Court in that way.

The Court: The testimony will be read.

(Here the Judge-Advocate read to the witness in the presence of the Court all of his testimony, given on Jan'y 20, except a small portion of it, which was omitted on account of the hour for adjournment having arrived, and asked—)

Q. Does the witness wish the remainder of his testimony read tomorrow morning?

A. (By witness) I think that will probably be all right tomorrow morning. So far it has been very satisfactory, and I think probably we might dispense with the reading of the balance of it.

Judge-Advocate: I move that we adjourn until tomorrow morning at ten o'clock.

Member of the Court: I move that we adjourn until tomorrow morning at nine o'clock.

Another Member of the Court: Will you be ready at ten o'clock?

Judge-Advocate: Yes, sir.

First Member: I object.

The Court: The motion before the Court is to adjourn until tomorrow morning at nine o'clock, and we will take a rising vote.

Motion to adjourn to meet at 9 o'clock was lost, and the motion to adjourn to meet at ten o'clock was carried.

The President: The Court stands adjourned until tomorrow morning at ten o'clock, A. M. (Court adjourned at 3 o'clock, P. M.)

THOMAS F. BARRY,
Col. & Asst Judge Adv. Genl.
Judge Advocate.

333 United States Court Room,
Savannah, Ga.,
January 22nd, 1898.

The Court met pursuant to its adjournment of yesterday at 10.00 o'clock a. m.

Present:

All the members of the Court and the Judge-Advocate.

The accused, his Counsel and the reporter, W. O. Tarver, were also present.

President: The Court will come to order.

Capt. Taylor: (A member of the Court) As I have certain duties for the performance of which I must make preparation in advance, as I am not able to perform them, I desire to make a motion now that, when this Court adjourns on a week from today, Saturday the 29th, it adjourn to meet on Tuesday, February 1st, at 10.00 o'clock. I make this motion now simply in order that I can, if it is not the pleasure of the Court to grant the motion, make arrangements to have those duties performed,—so that I can communicate with the Ordinance Officers in Washington, and make arrangements to have them performed.

The President: You have all heard the motion: all in favor of it say Aye; all opposed—No.

(The motion was unanimously voted down by the members of the Court.)

A. S. COOPER, a witness for the prosecution, recalled:

Judge-Advocate: This witness has desired a further reading of the testimony which he gave, but the record has not yet been made up. There was such an amount of it yesterday that the reporters have not been able to complete the record, but we can recall him at another time to complete that.

Witness: In thinking over the testimony, I remember two instances where inaccurate statements had been made,
334 and it is possible there might be others also, and possibly it might be best to read it all.

Q. (By the Court) I would like to ask you a question. Your work here was confined to the Savannah River and Harbor, wasn't it?

A. Not entirely; I was in charge at Cumberland Sound.
Q. (By the Court) For what length of time?
A. For nearly a year,—in 1887.
Q. (By the Court) Upon what portion of the River was the work under the contract of 1896?
A. It was mainly on the Breakwater, and that is one point where I made a mis-statement yesterday. There was some work done on what is known as Dam 31, which goes from the old quarantine station to Turtle Island. I should have stated that.
Q. (By the Court) The majority of the work was done on the Breakwater?
A. On the Breakwater. There were also five mattresses sunk on the Cockspur Island training wall at the outer end.
Q. (By the Court) What is the length of that Breakwater?
A. 7,000 feet.
Q (By the Court) What is the width of the jetty at the base?
A. The Breakwater has an average of 100 feet throughout.
Q. (By the Court) The width?
A. The width.
Q. (By the Court) What work did you supervise in Cumberland Sound under the contract of 1896?
A. That was not the contract of 1896; that was the contract of 1887.
Q. (By the Court) You didn't supervise any, then?
A. No, sir; not under the 1896 contract that was by Marion Twiggs, the engineer from Augusta.
Q. (By the Court) In 1893, when Capt. Carter first took charge of the work, you stated that he was under the supervision of Gen. Gilmore.
335 A. In 1893? No, I think not.
Q. (By the Court) No; when you first came here thirteen years ago?
A. When I first came he was directly under Capt. Bailey's orders and indirectly under Gen. Gilmore's, and later, very shortly, he was given charge of the Savannah District under Gen. Gilmore's orders.
Q. (By the Court) Where was Gen'l Gilmore stationed at that time?
A. At New York.

Q. (By the Court) Did he visit Savannah during that period?

A. I remember distinctly about two visits he made to Savannah; there might have been more, but that is all I know of.

Q. (By the Court) Did you note his presence on the work at any time?

A. I don't think he came directly on the works where the mats were being sunk. He came down the river on a small steam-boat, but I don't think he saw any mats sunk, and at this time, the mats were all of the first design; that is, log mats.

Q. (By the Court) I don't recall whether you testified to that or not, but were not these so-called bundles of brush built whilst Gen. Gilmore was in charge, and sunk into the training walls?

A. I would like to be informed of the date.

Q. (By the Court) Any date that occurs to you mind while Gen. Gilmore was in charge?

A. In order to answer that question, I would like to know the date Gen. Gilmore was relieved of charge?

Q. (By the Court) For instance, in the summer of 1888. —were any bundles of brush used before that time?

A. Some bundles of brush were used prior to 1888.

Q. (By the Court) Were the bundles of brush used when Gen. Gilmore was in charge similar to those used under Capt. Carter?

A. Similar; but I think they were a trifle better; there was not any great difference in them.

Q. (By the Court) Kindly describe the difference if there was any?

A. I think during those times the bundles were a
336 trifle better packed and a trifle better trimmed. As I said, I don't think there was any marked difference between them; the difference was not striking.

Q. (By the Court) I would like to ask where Gen. Gilmore had his office at that time?

A. That was in New York City, as I remember it.

Q. (By the Court) Did he come here often?

A. I don't remember but two visits from Gen. Gilmore, but I think quite likely there may have been more, because I was on the river most all of the time, and he could have come to Savannah, and I not have known it.

Q. (By the Court) Do you know what Gen. Gilmore's physical condition was at that time?

A. I think he was quite infirm, and not capable of going about like a younger officer would on the works.

Q. (By the Court) To your knowledge, did he ever see one of the bundles of brush used on the work?

A. I don't think he did.

Q. (By the Court) To your knowledge, did he?

A. He never saw them to my knowledge; I cannot say that he did not see them.

Q. (By the Court) Who was the contractor at that time?

A. I think it was under the firm name of Greene & Gaynor.

Q. (By the Judge-Advocate) Were the specifications contained in that contract under which the work was being done exactly of the same character as those of the contract existing now and under which the work is now done?

Mr. Charlton, of Counsel for Defense: We make the point that the specifications, as a matter of course, are in writing, and are, therefore, the best evidence; otherwise, we would have to rely upon the memory of this witness for many years to express what is already in writing and in the possession of the Court.

The President: The Court is not now strictly bound by the rules of evidence, and the witness may answer the 337 question. The Court adopts the question.

A. According to my recollection, the specifications were similar, but I don't think they were exactly the same, and the exact difference I do not believe I will be able to state.

Q. (By the Court) I would like to ask you if the specifications of the contract under which the matress was made, which you stated that Capt Carter showed you in 1893, and which he instructed you to be guided by,—I would like to know if the specifications of the contract under which that mattress was made were the same as the specifications of the contract of 1896?

A. According to my understanding and recollection, they were almost exactly the same; there was some minor difference like using riprap stone or riprap, but that was substituted with four classes of stone.

Q. (By the Court) But in regard to the construction of the mattresses and fascines?

A. In regard to the construction of the mattresses and fascines I think it is identical.

Q. (By the Court) Who first saw that mattress that Capt. Carter said should be your guide, you or he?

A. We were both present when it was being built; Capt. Carter was on the lighter for an hour or so with me while a certain section of the mattress was being built.

Q. (By the Court) Did he inspect it thoroughly?

A. Yes sir. This was not only a standard, but I was also told that the work was going on as Capt. Carter wished it, and, when I was sent down the river, I was told to look over the work and see how it was being constructed, so I would be thoroughly familiar with the work.

Q. (By the Court) Capt. Carter issued a little book of regulations?

A. Yes, sir.

Q. (By the Court) Prescribing that the Inspectors should hold the contractors strictly to the specifications?

338 A. No, sir; excuse me, but I don't think that expression is used in the book.

The Court: I would like that paragraph read.

Judge-Advocate: It was paragraph, I think, No. 96, "He must thoroughly comprehend the specifications and his general instructions".

Mr. Charlton: There is still another one, No. 102.

Judge-Advocate: (reading) "102. Mattresses and stone "will be measured immediately before they are placed in in "the work. Mattresses will first be carefully examined, and "the inspector must satisfy himself that they are construct- "ed in accordance with the contract before the accepts them "for measurement. He will measure the length in at least "two places, and the width in at least three; the product of "the means of these two dimensions, after they are correct- "ed for error of tape, will be reduced to square yards. The "original measurements will be taken to the nearest tenth "of a foot. The square yards of mat and cubic yards of stone "will be expressed in the nearest one-hundredth. When not "otherwise engaged, the inspector will, by personal observa- "tion, keep himself fully posted concerning the character of "the ballast being piled on barges by the contractor. Be- "fore measuring a barge-load of ballast, the inspector will "inform himself as far as practicable with regard to the qual- "ity and general character of the material. Should he con- "sider that ten per cent. of any load does not come up to the "requirements of the contract, he will reject the whole load "and not measure it. In measuring stones or shells, the

"length will be taken in three places, the width in five, and "the height at the fifteen intersecting points. The mean of "each set will be taken for the average length, width, and "height, and the correction of the tape-line or chain used will "then be applied to these means. The corrected means will "be used to compute the cubic yards. When stone is received "by weight. the displacement will be determined in ac-
339 "cordance with special instructions. The weight of a "cubic foot of fresh water will be assumed as 62.5 "pounds, and of salt water as 64 pounds. The place, date, and "time of day when a mattress or barge of loading material "is measured will be recorded, together with a clear state-"ment of the original (not copied) measurement notes, and "the final results. There will afterwards be added the neces-"sary notes showing when and where the material was de-"posited in the work."

Mr. Charlton: Will you also read 105.

Judge-Advocate: (reading) "In case of minor defects "in mattresses, loss of logs in sinking vacant spaces between "mattresses, variations in alignment, piles of dirt in barge-"loads of stone or shell, stone of inferior quality or under-"size, etc., the inspector will make a fair estimate, and re-"port the amount in each case which is not up to the re-"quirements of the contract, and submit his recommenda-"tions as to reductions or allowances to be made."

Judge-Advocate: That comes under the duties of the inspector.

Q. (By the Court) When did you first receive that volume containing those paragraphs which have just been read?

A. I haven't any accurate memory of that. I think it was handed to me by the clerk in the office sometime about three months after I arrived in Savannah the last time.

Q. (By the Court) What year was that?

A. 1893,—that is my recollection.

Q. (By the Court) Did Capt. Carter see that mattress, and direct you to be guided by it before or after the receipt by you of those regulations?

A. Before the receipt of those regulations.

Q. (By the Court) Did he ever inspect your work after issuing these regulations and satisfy himself whether or not you were exacting the construction of the mattresses in accordance with them?

A. Capt. Carter visited the works very often, some-
340 times three times a week; he came on the barges, and saw the entire work, and knew how it was going on.

Q. (By the Court) What character of mattresses did he see at those visits?

A. The same as I have described.

Q. (By the Court) In what did they differ from the mattresses required by the specifications?

A. In that the fascines were not fascines; they were bundles of brush, as described before, and there was very seldom the proper number of grillage poles between the fascines. That was the main difference between those mats that went into place and the mats required by the specifications.

Q. (By the Court) What is the purpose of building a training wall?

A. The purpose of building a training wall is to guide the ebb flow so as to confine it in certain places, to either maintain or scour out a channel, and in Savannah Harbor, the aim has also been to construct them of such heights that they would not keep out the flood tide, and not change the tidal range of the Harbor.

Q. (By the Court) Then, is the efficiency of a training wall dependent upon its height if it is properly constructed?

A. Yes, sir.

Q. (By the Court) Then, after the requisite depth has been attained, is the maintenance of that depth dependent upon maintaining a certain height of training walls?

A. I think so. In Savannah Harbor, after the construction of the training walls, the channel did not scour out as it was expected to. Then the channel was dredged. That was estimated in the original estimate, and it was found that the dredging had to be done after the work had been completed for a year and a half or two years; and so far, it has maintained the channel over all the shallows with one exception.

Q. (By the Court) Which training wall would best main-
tain its height without additional or further material, one
341 built of mattresses of bundles of brush like these or one built of mattresses containing fascines like those required by the specifications?

A. One built of the fascines required by the specifications would undoubtedly retain its height better and longer, because a bundle of brush has a great many small twiggs, and these small twiggs will disintegrate and fall off and there will be nothing left but the poles, and, in the original bundle, the

poles don't occupy the full size of the bundle and the space occupied by the twiggs has gone and he has lost it.

Q. (By the Court) Now, considering the relative cost, if you were going to improve a stream by building training walls in the most efficacious and most economical way, would you construct those training walls of mattresses of bundles of brush or of mattresses of fascines?

A. It would depend upon the character of the River?

Q. (By the Court) In the Savannah River?

A. I believe I would build them of bundles of brush, but I would put brush in my specifications, and ask for bids on them.

Q. (By the Court) Why?

A. Because bundles of brush are much cheaper.

Q. (By the Court) Would training walls built in that manner accomplish the same purpose?

A. Yes; for less money.

Q. (By the Court) If you could get training walls built of these bundles of brush and one built of fascines for the same money, which would you take?

A. I would decidedly take the fascines; there can be no doubt of that.

Q. (By the Court) Why?

A. Because the bundles of brush will shrink,—shrink down to a half or one-third of what they were originally, and the fascines, being all solid poles, or small branches,—not small branches, but straight poles left, will not settle, and they will not disintegrate, and, under the water, they will be almost indestructible if they are put in where they will not be destroyed by the teredo

342 Judge-Advocate: This is the contract, may it please the Court, to which he referred. Does the Court desire to have it submitted to the witness?

The Court: Yes, sir.

Judge-Advocate: (Handing witness paper) Will you look it over.

The Court: The witness will state what those papers are

Witness: Contract between John F. Gaynor and the United States Government for doing work on Savannah Harber.

Q. (By the Court) Do those papers contain a bid?

A. I did not notice that; I think they do.

Q. (By the Court) Look at that again, and that fully what those papers are?

A. This paper is a proposal, or bid, signed by John F. Gaynor, to do certain work in Savannah Harbor, and the next paper is a guarante signed by two witnesses and Jacob Paulson and B. D. Greene, and to them is attached a copy of the specifications and also a copy of the general instructions to bidders.

Q. (By the Court) What is the date of those specifications?

A. Dated Army Building, New York, November 29th, 1886.

Q. (By the Court) By whom are the specifications signed?

A. They are not signed.

Q. (By the Court) In blank, are they?

A. I beg pardon; they are signed by Q. A. Gilmore.

Q. (By the Court) What follows?

A. Then follows the general instructions to bidders, not signed at all.

Q. (By the Court) You say you have the contract there?

A. I never saw this paper before.

Q. (By the Court) Let me look at that paper one moment?

A. (Witness handed the President the paper.

The Court: Here (referring to copy of specifications attached to the papers in question) is the best evidence of the contents of the specifications of the former contract to which you refer. Will you (addressing Judge-Advocate) read
343 to the Court what that specification contains. The question arose upon the difference in the specifications under the former contract and the contract of 1896, and it was objected to because the witness could not give evidence of that fact.

Judge-Advocate: I presume it is not desired that I should read that which refers to location and general description of the work.

The Court: No.

Judge-Advocate: As to the construction of the dams referred to. (reading) "The dams will consist of brush made "into fascines and loaded with stone. The fascines may, at "the option of the engineer-in-charge, be laid one at a time "or in mats, except where the water is over four feet deep, "when they must be made into mats. When laid in shoal "water, or when required by the Engineer-in-charge, the fas-"cines will be fastened by stakes. There shall be, when

"stakes are used, at least two stakes for each fascine, or for "each foot in length of mat. These stakes shall be at least "five feet long for bottom layers and six feet long for the "upper layers, should any be laid, and they must be driven "until their heads are level with the brush"

Q. (By Judge-Advocate) (Handing witness paper) Is that the one you saw just now?

A. No; I think not.

Q. (By Judge-Advocate) Be sure; look it over and see?

A. That is not the one I had.

Q. (By Mr. Blair) This is the one (witness handed another paper)?

A. This is the paper I identified.

Judge-Advocate: This (proposal for improving Savanah nah River, Ga., dated Savannah, Ga., Dec. 24th, 1886, in reply to advertisement for proposals, dated New York, Nov. 29th, 1886) relates to a different improvement from the one in regard to which he testified. The wrong paper was brought into Court, and submitted to me. The paper which has since been handed to me is this (Proposal of Sept. 21st, 1886, 344 of John F. Gaynor, for Improvement of Harbor at Savannah, Ga., in reply to advertisement for proposals dated New York, September 11th, 1886) one (handing the President the paper).

The Court: Let the witness identify the paper.

(Judge-Advocate handed witness the paper)

Witness: This paper is proposal for work in Savannah Harbor, signed by John F. Gaynor.

Q. (By the Court) What is its date?

A. September 21st, 1886.

Q. (By the Court) Savannah Harbor?

A. I will give you the correct title: Improving Harbor at Savannah is the proper designation in the contract.

Q. (By the Court) What is the date of the specifications there?

A. September 11th, 1886. The proposal is dated September 21st, 1886, and that is followed by the guarantee of two guarantors, Edward Gaynor and Myron Bangs, and that is followed by General Instructions to Bidders, and that by the printed specifications signed by Q. A. Gilmore.

The Court: (Addressing the Judge-Advocate) Read the specifications

The Judge-Advocate: (reading) "Under these specifica- "tions it is the intention to continue the construction of

"dams, wing dams and training walls, at such points as the "Engineer in charge shall designate, between the upper limit "of the City of Savannah and Tybee Roads, and the work "will consist essentially in building up said dams, wing-dams "and training walls with successive courses composed of log "and brush mattresses, overlaid with riprap stone and in "putting stone alone upon the works wherever required. Ad- "ditional mattresses and stone will be used in repairing "and raising the cross-tides dam under these specifications, "if the Engineer in charge shall so direct. The mattress "is simply a raft of round logs, not less than 12 inches in "average diameter, and not less than 9 inches in diameter at "the small end, placed in close contact, side by side, at right

"angles to the line of the wall or dam, and firmly held
345 "by transverse binders spiked or bolted to them.

"The binders will be smaller logs or poles, not less "than 5 inches in diameter at the small end, and placed not "more than 8 feet apart, and those on the outside will be "close to the ends of the logs.

"The spaces between the binders will be closely filled up "with compact bundles of brush, placed parallel to the logs "of the mattress, to such a depth as to give a thickness of "not less than 6 inches when compacted in the finished work, "secured in place by pole binders, in such a manner as the "Engineer in charge shall approve. At the option of the "Engineer in charge there will be placed upon the raft of "logs, instead of the bundles of brush above described, a "layer of live wood brush sufficient to give 5 inches in thick- "ness in the finished work, secured in place by poles lashed "to the binders of the raft.

"The logs and binders used may be of loblolly or other "cheap variety of pine, and must be of gentle taper and "sufficiently straight, and the brush will be live hard-wood "brush. Logs will not be used that do fit close enough to- "gether to hold the stone safely, even without the aid of "brush.

"The mattresses will be laid in sections of convenient "length in juxtaposition, or with such laps as the engineer "in charge shall direct, and each section will be made of the "full width of the mattress course, as fixed by the Engineer "in charge during the progress of the work.

"This width may vary from 10 feet to 100 feet.

"Gaps between the edges of adjacent sections of mattresses

"will be filled with stone by the contractor, to be paid for at "a price equal to the price of the mattress work.

"The stone will be sound, dense, of compact form, and of "suitably random sizes, varying in weight from 15 to 400 "pounds. When received by weight, twenty-eight hundred "(2,800) pounds will be required to the cubic yard; when re-
"ceived by measurement, the stones will be fairly piled
346 "upon scows or lighters. Loads of stone submitted for
"measurement that contain any appreciable quantity of "defective stone, or that are loosely or not fairly loaded, or "so loaded that they cannot be accurately measured, will not "be accepted.

"The general depth of stone covering the mattress will be "from six inches to one foot, at the option of the engineer in "charge, to be distributed as said Engineer shall direct, but "the right is reserved to place additional stone at points on "any of the works, where, in the opinion of the said Engin-"eer, it is considered to be necessary, and such stone when "used above mean-low water shall, at the option of said En-"gineer, be either placed in position or thrown on rip-rap."

The Court: Is there any other design described there?

Judge-Advocate: No other design described.

Mr. Blair (of Counsel for defense:) With permission of the Court, I would like to read the specifications of this second contract with General Gilmore, which was the first one identified by the witness, and is dated November 29th, 1886, because it contains a description of brush fascines.

The Court: That, you say, is a second contract?

Mr. Blair: This is the one first offered to the witness, and first identified, and is the second contract, but relates to improving Savannah River, Georgia,—the improvement of the Savannah River below Augusta, Georgia.

The Court: You have the guarantee and specifications?

Mr. Blair: I have the specifications, and I desire to read to the Court from these specifications General Gilmore's description of a brush fascine.

Judge-Advocate: This is a matter which this witness, I understand, knows nothing whatever about. If the wit-
347 ness referred to the contract entered into under this bid, I should interpose no objection.

The Court: I want to know the date of the proposal last identified.

Judge-Advocate: September 21st, 1886.

The Court: What is the date of that other proposal?

Judge-Advocate: December 24th, 1886.

The Court: You say he knows nothing about that other contract?

Judge-Advocate: I so understand; he may be asked by the Court.

Q. (By the Court:) The first proposal and specifications are the ones you identified here?

A. I will state that I never saw the contracts, or any of them, but the specifications of the last one (specifications of September 11th, 1886, on which was based proposal of September 21st, 1886) I identified. I had something to do with; the specifications of the first one I identified (specifications of Nove[illegible]er 29th, 1886, on which was based proposal of December 24th, 1886,) I had nothing to do with

The Court: Very well, read it, Mr. Blair. The Judge-Advocate will have no objections, I presume.

Judge-Advocate: I have no objection.

Mr. Blair: (reading) "Fascines shall be made of live "brush, well trimmed and closely choked, fifteen (15) feet "long and from twelve (12) to fifteen (15) inches in diameter "at the butt, and tied with four (4) bands of wire or tarred "rope, the bands to be placed as the Engineer in charge shall "approve. When made into mats they will be closely packed "and secured by at least three (3) pairs of binding poles, "joined by ties of wire or tarred rope, not more that two "(2) feet apart. The form of the fascines will be slightly "tapering, and when made into mats the butts will be side by "side.

"Mats must be from twelve (12) to fifteen (15) inches 348 "thick at the butt-ends of the fascines, and not less than "fifteen (15) feet wide

"Bids will be decided on the basis of one (1) cubic yard "of stone to one (1) cubic yard of brush fascines."

Judge-Advocate: I would like to have the witness asked if the specifications which refer to bundles of brush is the one to which he had any relation under the contract.

The Court: The Court adopts the question.

A. The contract just read in regard to Savannah harbor?

Q. (By the Court:) The specifications?

A. The specifications just read in regard to Savannah harbor?

Q. (By the Court:) Read by Mr. Blair.

A. No; by Col. Barr.

Q. (By the Court:) The specifications first read.

A. Those first read, as I understand it, had reference to Savannah harbor. In that was specified the log mats, or as in later contracts they were called the first design, and also some fascines to be placed in places on the harbor where Jetties had settled, to bring them up to the proper height: Is that the question the Court wishes

Q. (By the Court:) No, sir, it is not. The stenographer will please read the question.

Stenographer: (Reading question) "I would like to have "the witness asked if the specifications which refer to bundles "brush is the one to which he had any relation under the con- "tract?"

A. I had nothing to do with that contract.

Q. (By the Court:) I would like to be informed if the specifications which Mr. Blair just read are a part of the contract which was made by General Gilmore?

Judge-Advocate: In the matter over which the witness was placed?

The Court: When I find out when the contract was
349 made, then I want to ask if the witness had anything to do with it— the specifications.

Judge-Advocate: These specifications which were read by Mr. Blair?

The President: Some of the members of the Court are not satisfied with the last answer given by the witness.

Judge-Advocate: I will frame the Interrogatories somewhat differently so that perhaps he may understand it more fully.

Q. (framed by the Judge-Advocate, and adopted by the Court:) The specifications read by Mr. Blair refer to Savannah River below Augusta, and specify fascines; had you anything to do with that contract?

A. I had nothing to do with that contract.

Q. (By the Court:) The specifications read by the Judge-Wdvocate refer to logs with bundles of brush; had you anything to do with that?

A. I did.

Judge-Advocate: That is all I shall want of this witness upon this branch of the case. He will be recalled on new matter at a subsequent stage.

PAUL E. TWIGGS, a witness called for the prosecution, being duly sworn, testified as follows:

Direct Examination by the Judge-Advocate.

Q. What is your full name?
A. Paul E Twiggs.
Q. What is your business?
A. United States Inspector, Savannah harbor.
350 Q. How long have you been in the service of the Government?
A. Between six and seven years.
Q. Engaged all of that time upon river and harbor improvements?
A. Yes, sir; not all of that time in Savannah Harbor, though.
Q? But upon river and harbor improvements?
A. Yes, sir.
Q. What has been the nature of the duties performed by you?
A. Inspector of jetty work and dredging, and mattresses, during the time I staid with the Government.
Q. When did you first enter the service of the Government?
A. I do not remember. It has been about six or seven years ago; between six and seven. I cannot remember with accuracy the year or the month.
Q. Under what officer were you employed?
A. First under Capt. Bixby, now Maj. Bixby, who was afterwards relieved by Major Stanton; I was a short time under Maj. Stanton in charge of the work.
Q. Under whom did you next serve?
A. Capt. Carter.
Q. Where?
A. Savannah Harbor.
Q. What were the nature of your duties?
A. I was first put on the dredges.
Q. How long did you remain there?
A. Probably two months at that time; it may have been longer and may not have been that long.
Q. Then to what duty were you assigned?
A. I was given charge of the jetty work at the Lower Flats training wall, Savannah.

351 Q. Given charge in what capacity?
A. Inspector.
Q. When was that?
A. I don't remember whether I came over here in 1892 or 1893; it was during the contract of 1892.
Q. Who was the Assistant Engineer in charge?
A. There was no Assistant Engineer in charge over me at that time; Capt. Carter had entire charge of the work on the river.
Q. You received your instructions, then, from Capt. Carter?
A. From Capt. Carter.
Q. That is the accused officer here?
A. Yes, sir.
Q. What instructions did you receive?
A. What have you reference to?
Q. In relation to the character of the materials to be passed upon by you?
A. When I took charge of the Jetty work?
Q. As Inspector?
A. Capt. Carter instructed me just after coming down on the works that the fascines were not to be military fascines, and that he did not wish the contractor pressed.
Q. Did Capt. Carter visit the works while you were inspector?
A. Frequently.
Q. How often?
A. From two to three times a week.
Q. Did he see, on those occasions, the character of the mattresses which were being used?
A. He certainly did; he ought to have; he was there.
Q. What was the character of those mattresses; describe them?
352 A. They were made of loose brush, made into bundles; these bundles were put into the mat with grillage poles of different lengths and size as a top and bottom foundation.
Q. Did you have a copy of the specifications of the contract?
A. I did, sir.
Q. Were those mattresses built in accordance with the terms of the contract?
A. No, sir.

Q. State specifically the difference between the mattresses as built and those as required.

A. I will state that the only experience I have ever had in the construction of mats and fascines was under Capt. Bixby. The fascine that I was instructed to build for him was a military fascine, so he called it. I had never seen one before. The fascine, as called for by the specifications here of the 1892 contract, I should say was a military fascine.

Q. That is simply from the description it gives?

A. That is right, sir. The bundles, or I don't know, I suppose you would call them fascines,—they were bundles of brush—I suppose would be the proper name, did not come up to the specifications for two or three reasons.

Q. State the reasons?

A. The brush was not trimmed at all; they were not choked. If they were, they were certainly very loosely choked. I cannot say positively whether or not they were choked. If they were choked, they were very loosely choked; the choking was not done properly. The brush was not straight, and not of the proper length. They were not tied at the proper intervals, and they were not tied,—bound,—by the proper material, and not compressed.

353 Q. Did you report those facts to Capt. Carter?

A. I did not, sir.

Q. Why did you not?

A. Because Capt. Carter was on the works and saw it. I found the work going on in that way when I took charge. I made no alteration, and made no reports, from the fact that Capt. Carter was present from two to three times a week there on the works himself.

Q. Did he make any comment upon the character of the work?

A. Frequently he made the remark that the material was good. I say frequently,—on one or two occasions Capt. Carter remarked, in my presence, that the material was good.

Q. I have understood that the mattresses going in at that time were known as continuous mattresses?

A. Continuous mats.

Q. In how many courses?

A. From two to four or five; I don't remember accurately, —may have been five at different times and different places, according to the depth; whatever the depth called for. I do not remember accurately.

Q. Describe the construction of each course?

A. The continuous mat was built on a barge,—at this time on skiffs,—that was inclined in a downward direction towards the water. Grillage poles were laid at right angles with each other, and these bundles were placed upon these grillage poles and pressed down, and there were grillage poles placed on top of that at right angles. This mat was continued: it did not end at all. At every tide, or whenever the high water slacked or whenever the low water slacked whenever they could sink it without any danger to the mat, they would sink them, but never turn loose the mat from the barge. That is what we call a continuous mat.

354 Q. How long did you remain there as Inspector?

A. Probably six months; probably not that long; probably longer; the records will show.

Q. Did the same character of work continue all the time you were there as Inspector?

A. Yes, sir.

Q. Did you know where the bundles of brush came from of which the mattresses were made?

A. I did not.

Q. How were they brought there?

A. On barges.

Q. The mattresses were built right there?

A. Yes, sir.

Q. Woven together, as I understand, you might call it?

A. Yes, sir.

Q. I think you have testified as to what, in your judgment, is a properly made fascine?

A. No, I do not think so.

Q. Well, please state what you know about making fascines?

A. I got my instructions from Capt. Bixby, as I stated. There should be brush closely trimmed, as a matter of fact trimmed to a pole,—small poles made into fascines, choked with a chain or rope choker to nine, ten or eleven inches, as the case might be, according to the specifications, wrapped at intervals of two feet with wire. That was our specifications there,—Georgetown.

Q. That is Georgetown, S. C.?

A. Georgetown, S. C.; that is the only experience I had.—and those wires were twisted with plyers or nippers. The mat was then trimmed close with a brush hook; that is, the small twiggs and little debris that was left around, such

355 as leaves, etc., that was trimmed off close.

Q. You were on duty at that time at Georgetown when you were so instructed and learned of the making of those mats?

A. Yes, sir.

Q. You saw the specifications under which they were made?

A. Yes, sir.

Q. Were they of the same character as the specifications given to you for your guidance in Savannah harbor?

A. The making of the fascines was about the same. The construction of the mat was a little different, I think.

Q. Did you ever take any action in regard to the failure of the contractors to comply with the provisions of the contract?

A. Yes, sir.

Q. What action was that?

A. I stopped the work at the Lower Flats training wall on one occasion.

Q. For what reason?

A. Because they were not using the proper material in the mat.

Q. Did you report to Capt. Carter that you had stopped the work?

A. Yes, sir; I will state what that was, that it may not be misconstrued.

Q. State fully?

A. They had been using, according to the specifications, or as near the specifications as they could, or as they did, grillage poles for the mat. They had used up all of the grillage poles, and they wanted to continue the building of the mat by the use of fascines, or bundles of brush, instead of grillage poles. I would not allow it, and I therefore stopped the work. The contractors' foreman came to Savannah, and got instructions from Capt. Carter—

Q. Only what you know yourself.

A. That is what he gave me.

356 Q. You may state what you did and what ensued,—what was the result?

A. I will state that, after stopping the work, there was a delay of probably three or four hours until the Foreman came back from Savannah. I presume he went there He brought a note from Capt. Carter—a memrandum—instructing me—

Q. Where is that note?

A. That note was destroyed in the house—flat, in which

we stayed, during the storm. All the records and letters were destroyed there.

Q. What did it contain?

A. It ordered me to allow the contractor to continue building of the mat, and to use fascines until the poles arrived.

Q. You did so?

A. I did, sir.

Q. Did you ever have cause to take similar action again?

A. On another occasion—

Q. Qhat were the circumstances?

A. Similar circumstances, with the exception that the work was not delayed as long, as Capt. Carter was coming down the river, and I spoke to him in regard to the matter again, and he gave the contractor himself permission.

Q. What was wrong?

A. The same thing: they wanted to use fascines instead of poles for bundles.

Q. That changed the character of the bundles, did that not?

A. No, sir.

Q. Were they not more tightly compressed?

A. No, sir; the identical bundle they were building the mat with. That was for grillages.

Q. They were not more closely choked than those you have testified to?

357 A. No; they had no way of choking the mat at all.

Q. Did the contractors, or their representatives on the works, ever make any better efforts to improve the quality of the brush mattresses when there was likelihood of an inspection by Capt. Carter?

A. No, sir, I don't think so.

Q. Will you look at those bundles on the platform behind you?

A. Yes, sir. (Witness went over to the pile of brush and looked at it.)

Q. Have you ever seen anything like them?

A. Frequently, sir.

Q. Where?

A. On this work.

Q. Point out, if you can, to the Court such bundles as you have seen go into the works when you were Inspector.

A. Point out any particular bundles?

Q. Any of them.

A. All of them, I think, sir: I have seen all of them. That was about—I should say that that was a fair sample. There may have been some better, and there may have been some worse, than that, but I should say that the majority, or the greater part, of the brush was similar to this.

Q. You have seen bundles not so well constructed and tied as those put into that work?

A. Yes, sir; that is right.

Cross-Examination by Mr. Charlton.

Q. The only experience you have had with fascines was in Georgetown bay before you came here?

A. Georgetown harbor.

Q. And that, you say, was strictly a military fascine?

358 A. I think so.

Q. Had you ever seen a military fascine before you went there?

A. No, sir.

Q. And Capt. Bixby instructed you that that was a military fascine?

A. That is right.

Q. And, as I understand you, it was a cylindrical bundle of rods tightly compressed by the use of a chain or other appliance?

A. That is right.

Q. When did you first hear the expression "bundles of brush"?

A. Where do you mean?

Q. As applied to these things put into the improvement here, when did you first hear that expression?

A. Ever since I have been on the works.

Q. Were they always called that way?

A. Yes, sir; bundles of brush. Sometimes "fascines" was used.

Q. Did you ever hear the expression "brush fascines"?

A. Oh, yes, sir; I have heard the expression.

Q. As applied to what?

A. Fascines made of brush.

Q. These here in this harbor?

A. Well, no; I can't call that a brush fascine, from the fact that it is not choked.

Q. What is your idea of a brush fascine?

A. One that is made of brush, trimmed close and choked down to nine inches, and bound at intervals of two feet.

Q. What do you call "trimmed close"?

A. Trimmed after they go into the bundles.

Q. What do you cut off?

A. Cut off the outside.

Q. What do you cut off the stem?

359 A. Don't cut anything off the stem when it is a brush fascine. I am giving you simply my idea. A brush fascine, according to my idea, would be brush put down into a fascine; that is, on wooden horses, choked with a chain or rope choker, as the case might be, to a certain diameter, without the brush having been trimmed previously, bound at intervals of two feet, as the specifications would call for, I presume, then trimmed off afterwards. I would say that was a brush fascine.

Q. When you put it upon these horses,—I understand you to say horses?

A. Yes, wooden horses,—

Q. Yes, I understand what you mean, wooden horses—When you put it upon them all the twigs and leaves are on it?

A. Not the leaves, because that, I should think, would be stripped.

Q. Leave the twigs and branches on?

A. That is right.

Q. And then you would choke it down?

A. Yes, sir.

Q. Always to two feet?

A. I don't know; according to the specifications.

Q. And after you got it down there you would carefully clip off all the twigs and branches?

A. Yes, sir.

Q. So that you would leave nothing but a military fascine?

A. I should not say that was a military fascine.

Q. What is the difference between a brush fascine and a military fascine?

A. On a military fascine the brush is trimmed before it goes into the bundles.

Q. And a brush fascine is trimmed after it goes in?

A. Yes, sir; trimmed after it goes in; I think that is 360 about the difference.

Q. That is your idea—you never saw a brush fascine?

A. No, I don't think so, unless you call these (indicating brush in court-room) brush fascines.

Q. And you say that is the general average (indicating bundles of brush in the court-room) of the so-called fascines or bundles of brush that went into this improvement?

A. I should think that was a good sample: they may have been better or worse.

Q. Well, which—worse, or better, or about the average?

A. I say that is about the average.

Q. You are quite as certain about that as of anything else you have testified to?

A. Certainly, according to my judgment.

Q. You got up there and looked at that entire series of bundles, and said that was the general average: did you include the bundles down there at the bottom?

A. I never saw those; I can't see through the bundles.

Q. I didn't think so.

A. Of course, I can't say about what I didn't see.

Q Are you acquainted with the character of brush in and around Augusta,—live brush?

A. Yes, sir.

Q. Is it straighter or more crooked than that down here?

A. About the same, I should say: I have never seen any brush cut there for the purpose of building fascines.

Q. And you think the brush up there is exactly like that here?

A. Not exactly like it.

Q. I mean in regard to its straightness in its growth?

361 A. I should say in the low country, and around here, the quality of brush would be better than that in Augusta.

Q. That is your judgment?

A. That is my judgment.

Q. And the character of the brush is different, is it not, in the low country?

A. Yes, sir; we have a great deal of brush that they haven't got.

Q. But you think the brush here is apt to be straighter than it is up there?

A. I think so, yes, sir.

Q. In remarking the difference between the military fascines you saw constructed at Georgetown, and the alleged fas-

cines constructed here, you mentioned a great many differences, and one was choking?

A. Yes, sir.

Q. The choking over there was to what diameter?

A. Nine inches.

Q. And the choking here was to what diameter?

A. None, particularly.

Q. No choking?

A. I didn't see any.

Q. Didn't see any evidence of choking at all?

A. I did not.

Q. You are perfectly clear about that?

A. Perfectly clear.

Q. That (indicating bundles of brush in court-room) is about the average class of choking?

A. I think so.

Q. That (indicating bundles of brush in court-room) is not choked at all, is it?

362 A. I don't think so.

Q. Therefore, there was no choking done?

A. I don't say there was no choking done, but if choked they were choked very improperly.

Q. Another distinction between the Georgetown fascine and the Savannah fascine was in the character of the binder, was it not?

A. Yes, sir.

Q. Over in Georgetown, it was what over there—what did you use?

A. Used wire?

Q. Annealed wire?

A. Annealed wire.

Q. And over here they used what?

A. I don't know what they call it. I would take it to be rope-yarn or spun-yarn, with some tar on it.

Q. Would you call it lath-yarn?

A. It has been called that.

Q. And you say the failure to use annealed wire—I understand that this tarred rope was one of the elements of the fascine, or rather made this one here—lacks one of the elements of a fascine?

A. No, sir; because fascines are sometimes tied with tarred rope.

Q. Then what is the objection to tieing these here with tarred rope?

A. That is not tarred rope; that is a strand of rope, I should say.

Q. You would not consider it a proper thing—lath yarn—to put around a fascine?

A. Not when properly choked,—I should not think so.

Q. What is the objection—in regard to its lack of strength? Think it would break?

A. Yes, sir.

Q. You said, in answer to Col. Barr, that you were
363 given a copy of the specifications, and you saw at once that the work was not up to the specifications?

A. No, sir, I don't think I said that.

Q. I mean within a reasonable time—a day or two days?

A. I saw, the moment I examined the specifications,—I saw that they were not up to the specifications; in fact, I don't know what it was. I was instructed by Capt. Carter, and, if they were not to be military fascines, I didn't know what they were to be.

Q. As soon as he gave you that information you were completely at sea, because you didn't recognize any other fascine?

A. I did not recognize on his work any military fascine.

Q. Now, you were given these specifications and read them, and understood them to be a military fascine?

A. That is what I understood.

Q. And as those things were so completely at variance with your idea of a military fascine,—this brush being put in the river—, you concluded at once that it was not up to the specifications as soon as you saw it?

A. Certainly, as soon as I saw the specifications.

Q. You linked on to that answer that you were told by Capt. Carter not to press the contractors?

A. That is right.

Q. Did Capt. Carter ever tell you that your first duty was to look after the interests of the United States Government?

A. I don't think so.

Q. I want a positive answer from you upon that point.

A. I say I have no recollection of Capt. Carter ever using those words to me. I don't think there was any occasion for it.

Q. Well, words that conveyed exactly the same idea to your mind?

A. If he did, I don't remember it.

364 Q. Did he not say to you that your first duty was to look after the interests of the United States Government; and, that being protected, that the contractors were not to be pressed if they conformed to their duty?

A. No, sir.

Q. Then, I understand you to swear positively that he never used any such expression, and that you have never testified that Capt. Carter did tell you that?

A. Yes, sir; I will swear to that absolutely.

Q. Now, on September 21st, 1897, or in that neighborhood, in the City of Savannah, in the presence of at least three persons, was not this question asked you and was not this reply given by you: "Q. The instructions given you then were, were they not, to do all you could while there to see that the interests of the United States were protected, and in doing so, if you could give any assistance to the contractor in any legitimate way, to help him facilitate his work, you could do so? A. Yes, sir." Is that true, or not true?

A. I don't think I made that statement.

Q. Following immediately—

A. Excuse me, one minute: If I made that statement, I misunderstood it.

Q. Well, we will try the second question: "Q. Your first duty was to look out for the United States, and then afterwards, if consistent with your duty, you could give any assistance to the contractor that was proper? A. I think that is right, sir." Did you make that answer?

A. I may have made that answer; I don't remember. (

Q. Suppose you made that answer—, was it true or false?

A. Suppose I made the answer?

Q. Yes, if it be true that you did make these answers

365 to these questions, were the answers true or false?

A. In the first place, I don't acknowledge making those answers. I don't remember the questions.

Q. That is not my question to you—?

A. I am going to answer it, sir. Let me hear those questions again. I would like to answer straight on that, sir.

Q. (Mr. Charlton reading:) "Q. The instructions given you then were, were they not, to do all you could while there to see that the interests of the United States were protected, and in doing so, if you could give any assistance to the contractor, in a legitimate way, to help him facilitate his work, you could do so? A. Yes, sir."

A. I think there was something said in regard to it, if I am not mistaken: I remember—I recall it.

Q. How much of it?

A. I don't know, sir. In regard to the assisting of the contractor in carrying on the work, I think I answered "yes".

Q. Now, you are an intelligent man: Is it possible for you to misunderstand that question?

A. No, sir; I don't think so.

Q. Shall I read the second one?

A. Go ahead.

Q. (Counsel reading:) "Q. Your first duty was to look out for the United States, and then afterwards, if consistent with your duty, you could give any assistance to the contractor that was proper? A. I think that is right, sir."

A. I see what you are driving at. That was before the Board of Inquiry, was it not?

Q. Yes, sir.

A. And not by Capt. Carter: that question was asked me before the Board.

366 Q. Yes, sir.

A. I understood it. Yes, sir; those questions are correct. I was under the impression that you meant that Capt. Carter had given me those instructions in his office or on the work. Those questions were asked me before the Board of Inquiry.

Q. And were the answers given correct?

A. I think I answered them in that way.

Q. Don't you know?

A. I think so; I don't remember exactly the wording ot it.

Q. You know these answers are not elaborately worded ones. One is "yes, sir", and the other says, "I think that is right, sir".

A. If I said so, I will swear to it.

Q. May I ask you whether you answered "yes, sir", to the first question, and "I think that is right, sir", to the second question?

A. Who were the questions asked by?

Q. I don't think it makes any difference who asked the questions. Capt. Carter asked you both of those questions.

A. Yes, sir; I think that that was right.

Q. I want to know whether it was right.

A. I will answer yes, sir.

Q. Now, you have testified that all this apparently worthless stuff—bundles of worthless stuff—, went into the gov-

ernment work: have you ever reported to Capt. Carter, during the time you were Inspector there, an allowance for the contractor having too much material?

A. Yes, sir.

Q. Better than called for by the specifications?

A. No, sir.

Q. Did you report more material than was called for by the specifications?

A. Yes, sir.

367 Q. Was it allowed?

A. It was not at that time.

Q. You recommended the allowance?

A. I certainly did.

Q. In other words, according to your idea, the contractors were doing better than they were required to do?

A. No, sir.

Q. Why did you make that recommendation?

A. Because he requested me to do it.

Q. Who requested you to do it?

A. Capt. Carter.

Q. Who was present?

A. Capt. Carter came upon the works when we were measuring the mats.—I say,—he stated to me in this language: "Where the mats run over measurement by courses, you can make a recommendation for extra height." I did so.

Q. Is that all there is to it?

A. That is all.

Q. You did recommend it?

A. I did.

Q. And he didn't allow it, did he?

A. He did not at that time. He wrote me a letter shortly afterwards—

Q. Where is that letter?

A. I don't know: that was lost in the house-flat, during the storm. I suppose his copies will show that.

Q. Now, how was it if he desired to have an allowance recommended for these people, in this particular instance when it was recommended by you, he did not give it?

A. I suppose hd did not give it. I am going to tell about that. I don't know whether it was ever allowed or not.

368 His letter stated to me that the recommendation would not be allowed at present, but at the completion of the work it would then be taken into consideration. Now, wheth-

er it was taken into consideration, and that allowed, I don't know. I suppose the records will show.

Q. Do you remember about what date that was, so we can find out?

A. I don't know.

Q. Do you remember the month you went on the works as Inspector?

A. No, sir.

Q. Was it not about June or July?

A. I think so, I know it was in the Summer.

Q. That is the only time you were there,—those three, or four, or five months?

A. Yes, sir.

Q. Are you acquainted with Mr. A. S. Cooper, Assistant Engineer?

A. I am.

Q. Do you know his general character for truth and veracity in the community in which he lives?

Judge-Advocate: I must object to that in their cross-examination. If they desire to impeach a witness for the prosecution by this witness, they must call this witness for the defense.

Mr. Charlton: I withdraw it for the moment.

Q. (Mr. Charlton continuing:) Do you remember any instance in which Mr. Cooper falsified about you?

A. Yes, I can recall the circumstances—

Judge-Advocate: That is the same thing. I desire to allow the utmost latitude—

Witness:— I can answer the question in a satisfactory manner, I think. That circumstance ocurred when I was Inspector of dredging on the dredge "Tomacheechee"; that is the circumstance you have reference to?

369 Q. (By Mr. Charlton) That is it, I think.

A. I was given instructions by Mr. Cooper, who was Assistant Engineer, to take the dredge up to Marsh Island, and there dig mud and marsh for the purpose of depositing that stuff behind the closing dam between the main-land and Marsh Island. He instructed me if I could not get the mud on the edge of the Island, to go into the Island until I did get it. He wished no sand; he wanted mud. I did as I was instructed. Shortly afterwards I was relieved.

Q. You mean relieved from employment?

A. Yes, sir; Capt. Benyuard came up and relieved me. I was at sea. I didn't know what I had done. Capt. Carter,

when I went to the office, told me that there were grave charges against me. I said to him, "I know nothing of them. What are they? I am at sea. Who were the charges preferred by?" He stated that they were preferred by A. S. Cooper, who said that I had disobeyed orders in digging farther into Marsh Island than was required, and in not digging the proper stuff, as per his orders. I gave it the lie. I said, "A. S. Cooper lied." I told Capt. Carter that. Capt. Carter reproved me at the time, and said that I must not talk about his Assistant Engineer in that way, and I think I remarked to Capt. Carter that I had certain rights as well as his Assistant Engineer, and if he lied on me I was going to say so; and it was an infamous lie. That is the remark I used. I had never seen Mr. Cooper on the subject,—never had had a conversation with him in regard to it at any one time previous to that, or after that, until about two weeks ago, About two weeks ago,—that was the time the testimony was given before the Board, I think—the Board of Inquiry—I was approached on the subject by Mr. Cooper. He said that there was a mistake,—that there was an error somewhere in regard to my testimony, so far as filling up the Closing Dam at Marsh Island with mud was concerned. I said "In
370 what manner?" He said "Well, I have made no such repor as Capt. Carter showed you". I said "You didn't report me for disobedience of orders for digging that mud in the wrong place, going too far in the Island?" He said "I did not". I said "Capt. Carter showed be a memorandum, —pulled it out of his drawer—, and read the memorandum to me, in which these charges were written, I presume, for he held the memorandum in front of him". He said "I made no memorandum. I made no such charges. I did report that the stuff was dumped in the wrong place: that is the report that I made to Capt. Carter, and I did not report you for disobedience of orders." Now, that is all I know about it. That is simply, now, a mere matter of veracity between Capt. Carter and Mr. Cooper.

Q. Up to two weeks ago you were still of the opinion that Mr. Cooper had lied?

A. I certainly was.

Q. And you were approached by him as this case began to come on two weeks ago, to explain the matter to you?

A. I do not know why it was, but that is the way it was.

Q. He made no explanation to you last September when you reiterated this statement?

A. I had no conversation with Mr. Cooper in regard to the matter at all; I only spoke to him on business, as I did not feel very friendly to him. If the statement was made by Mr. Cooper, it is false. If it was not made by Mr. Cooper, it is not false. I thought at the time that it was made by Mr. Cooper, and I didn't have much use for him, and never spoke to him except on business. When Mr. Cooper tells me he did not make the statement —

Q. Your opinion changes of him at once?

A. No, I didn't say that at all, but I have as much
371 right to suppose that Mr. Cooper can tell the truth as well as Capt. Carter; I don't know. It is simply a matter of veracity between the two. I have nothing to do with it.

Q. You are out of it?

A. I am out of it; that's right.

Q. Have you ever been ordered by Capt. Carter to build each mat strictly in accordance with the specifications?

A. I may have been; I don't remember. It has been a long time since I was on the works.

Q. Did you do it?

A. I did it according to the way he wished it done.

Q. When he said build strictly according to the specifications, you went ahead and built it on some idea outside of the specifications?

A. He was always present three or four times a week.

Q. But when you were given a distinctive order to build according to the specifications, which you say you understood, did you build them according to the specifications?

A. I did not.

Q. Why not?

A. Because Capt. Carter did not wish it. If he had, he would have changed the work when he came down on it. He never did that while I was there.

Q. How many mattresses, fascines, stone or anything else have you inspected under the contract of 1896?

A. None at all.

Q. You haven't been in the employment of the government?

A. No, sir; I haven't been on the Jetty work for 1896 at all.

Q. Are you in the employment of the Government now?

A. Yes, sir.

Q. In what capacity?
372 A. Dredging, and dumping the scows.
Q. That is, under Capt. Gillette?
A. Yes, sir.

Re-direct Examination by the Judge-Advocate.

Q. I understood you to say that Mr. Cooper's report to Capt. Carter, if he made one, in relation to the charge against you, was not shown to you?

A. No, sir; it was not shown to me. It was a memorandum that either Mr. Cooper or Capt. Carter made, I don't know which. He pulled it out of his drawer, and read this memorandum. Whether the memorandum was written by Mr. Cooper or Capt. Carter I am unable to say.

Q. Or whether it was a memorandum?

A. Or whether it was a memorandum. I didn't see anything on it. I was standing in front of him and could not see.

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373 SAMUEL M. HALE, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by the Judge-Advocate.

Q. State your full name and occupation?

A. S. M. Hale; and I was Inspector, surveyor, and recorder in Savannah harbor.

Q. How long have you been engaged in that employment?

A. I started here in May, I think, of 1891, and have been on these different parts of the works.

Q. In this engineering district?

A. Yes, sir.

Q. You have had experience on fascines?

A. Yes, sir.

Q. What has it been?

A. Well, I had experience on fascines in Augusta, and here under Capt. Gillette. In Augusta, in 1893, under Capt. Carter.

Q. Then you understand how a fascine should be made?

A. Yes, sir.

Q. When were you last employed by Capt. Carter.
A. I think it was in June, 1897.
Q. How long did you remain with him from that time?
A. The last time I was employed by Capt. Carter I think it was—I was laid off at several different times—1894.
Q. The point is, and the 7th of June, 1897, was the last employment that you had?
A. The last employment that I had with Capt. Carter.
Q. When did you next go into the service of the United States?
A. Under Capt. Gillette.
Q. When?
374 A. On August 1st.
Q. Last?
A. Last, yes, sir.
Q. What duties were prescribed for you?
A. I was told to go out to Foot-Point camp, and out to the camp they had at Hilton Head, S. C., and inspect the building of mats according to the specifications.
Q Did you do so?
A. Yes, sir.
Q. State what you found?
A. With two exceptions, and that is in the grillage poles and making scarf joints, and for wire or tarred rope, and at that time the contractor had no wire or tarred rope, and I wrote to Mr. Cooper (and I was to send my reports to Mr. Cooper) at the time and explained this matter; and I didn't get any answer until after I had built the first mat; but I put this rope yarn at intervals of one foot apart, and I told the Foreman and the men to double it in every case. That was my orders when I left each camp.
Q. That was the orders from Capt. Gillette?
A. No, I gave that myself, because they did not have wire nor tarred rope.
Q. This was the mattress camp from which brush was being taken, I suppose,—where it was assembled after being bundled?
A. These were the old bundles. We were to trim and to make a fascine required by the specifications at the place where they hauled this brush.
Q. At the place where it was deposited for the purposes of construction?
A. Yes, sir.

Q. Not where it was bundled?

375 A. No, sir.

Q. You had seen fascines built for making mattresses before you went there?

A. Yes, sir.

Q. How did those bundles compare with the fascines you had seen used for the manufacture of mattresses?

A. There was no comparison at all; that is, they were bundles of brush here and fascines in Augusta.

Q. Are you familiar with the amount of labor used by the contractor to make these mattresses?

A. Yes, sir.

Q. What instructions did you received from Capt. Gillette?

A. The instructions I received from him you mean when I started first to the camp?

Q. All the instructions you received from him?

A. He told me to build these fascines according to the specifications; that was the instructions I got from him at first, and to report to Mr. Cooper. I went down to Tybee to report to Mr. Cooper, and I told him at the time,—I says, "Shall I build these mats of the same kind of fascines as we built in Augusta?" He said, "Yes." I explained to him how those fascines were built there.

Q. Were you furnished with the specifications, or had you read the specifications, as to the construction of those mattresses?

A. Yes, sir.

Q. Were they the same specifications as those under which you had made fascines before at Augusta?

A. Yes, sir; about the same thing word for word with one exception, and that is the lengths of the fascines were different.

Q. Who was the contractor at Augusta?

376 A. Mr. Albert Twiggs.

Q. Go on and tell about the construction of the mattress you were instructed by Capt. Gillette to construct?

A. The mattress was 50 by 100 feet long. First laid a bottom grillage, that is, poles one way and right-angle poles put on top of these; they were wired down and cross-wired at every joint, and then the 100 feet of bundles of fascines were laid and twenty men would press them,—after these bundles of fascines were laid,—would compact them together at intervals of about ten feet in the whole length of the mat,

and tie that until they built the whole mat. Then a top grillage would be put on and wired down to these fascines at these intervals of ten feet, and they were also wired, so as to hold the fascines in place until they could press in the other parts, and that was done the whole way through the mats. This top grillage was also wired won to the mat, to the bottom grillage, that is, at intervals between every joint, which was about six feet all around the mat. It was done that way at intervals, in between in different parts of the mat, of 12 to 15 feet.

Q. You did this work at the same place where the contractors had been having their mattresses constructed?

A. Yes, sir.

Q. Did you use bundles which were there ready for their use?

A. I had these bundles trimmed and made fascines out of them.

Q. Did you take that in bundles or cut open the bundles?

A. I cut the bundles open and picked out such parts as I thought could be trimmed porperly to make fascines.

Q. About how many bundles would it take to make one fascine under the specifications?

A. About eight of the same size.

377 Q. It took you to make one fascine eight of those bundles?

A. To make one 100 foot fascine?

Q. Yes?

A. I counted from fifty-eight to sixty-four of those bundles it took to make one 100 foot fascine after being trimmed.

Q. How long were the bundles?

A. The bundles were about fifteen feet long.

Q. The fascine, I understood, was one hundred feet long?

A. At first we built a few thirty, forty and sixty feet, but very few of those were built.

Q. How many of those bundles would it take to choke into a nine inch tightly choked bundle of equal length?

A. I suppose three or four.

Q. Did you find this out?

A. I tested that.

Q. You tested that?

A. Yes, sir.

Q. All the material that was used in those bundles you did not find servicable I understood you to say?

A. No, sir.

Q. Why was it not servicable?
A. Because it was mostly twiggs and leaves.
Q. How many 15 feet bundles would you have to use to make 15 feet of a fascine?
A. Eight,—about eight.
Q. Can you estimate as to the cost of the mats that were made of those bundles you found there?
A. Well, I did estimate that a mat built of those bundles we found there cost $180.00 approximately.
378 Q. That was from an actual investigation made by you and calculation upon the cost of labor, etc.?
A. Yes, sir.
Q. Was that for a three course mattress?
A. That was for a single course mattress built according to the specifications out of these brush I found there.
Q. How much a sq. yard would that be?
A. You mean to the mat?
Q. Yes, to the surface of each mat?
A. About 500.
Q. I am not asking how many sq. yds., but how much it would cost per square yard?
A. By using the amount trimmed from these bundles, I think about thirteen cents per square yard.
Q. Did you make an estimate of the cost of a mattress required by the specifications?
A. Yes, sir.
Q. How much was your estimate?
A. $168.00,—$167.75.
Q. For a mattress of what dimensions?
A. 50 by 100 feet.
Q. What would that be per square yard?
A. About thirty three cents.
Q. You may step over to that pile (indicating bundles of brush in court-room) of bundles and examine them.
A. (The witness examined the bundles)
Q. Did you see them?
A. Yes, sir.
Q. Do you want them moved at all?
379 A. Well, if they want to examine these bundles, I have the average bundle here that was used?
Q. You have seen bundles of that character used?
A. Yes, sir.
Q. In the construction of mattresses?
A. Yes, sir.

Q. In a condition such as they now are?
A. You mean have I seen mattresses built of such stuff as that?
Q. Yes?
A. Yes, sir; I have never examined them closely, though.
Q. Do you know where those bundles came from?
A. Yes, sir.
Q. Where from?
A. Foot Point, S. C.,—five of them.
Q. Who procured them?
A. I did.
Q. That was the mattress camp where they were constructed?
A. Yes, sir.
Q. Where did you find them there?
A. Right at the camp, where the mats were built and the fascines.
Q. Were they picked from any pile of bundles or did you take them from one pile?
A. I took those from some that were left over from building fascines required by the specifications after being trimmed.
Q. Do you know where those bundles were made?
A. In the vicinity of Foot Point, that it, within a mile.
Q. Do you know if any Inspector was present at any time to inspect these bundles and inspect the mattresses in process of construction?
A. No, sir.
380 Q. You don't know whether or not there was one there?
A. No, sir; I do not. I did not find any there at all.
Q. Was there a mattress in process of construction when you reached there?
A. There was a mattress there,—a three course mattress,—so I was told by the foreman.
Q. What did you see?
A. I saw this mattress; at least, he and I walked to the bank together, and I asked him what kind of a mattress it was—
Q. I want you to testify just what you saw?
A. I saw this mattress,—saw the top of it.
Q. Was it an uncompleted mattress?
A. They said it was a complete mattress.
Q. No matter what they said. Don't bring in what any

one said to you. Just state what you observed yourself and what you saw. You went to the place where this mattress was constructed or being constructed. Were those bundles of the same character as these bundles that you obtained?

A. I suppose about fifty feet the bundles were on the hill and the mattress was down a bluff like, on the barge on the water.

Q. As near as the bundles could be conveniently placed for the construction of the mattress?

A. Yes, sir.

Q. How many bundles did you find there at the landing?

A. I suppose there were 8,000 or 10,000 bundles. I was told different, of course.

Q. (Handing witness photograph) Do you recognize that photograph?

A. Yes, sir.

Q. Were you present when it was taken?

381 A. No, sir.

Q. You recognize it as what?

A. As a mat built according to the third design in the specifications.

Q. Do you know when it was taken or anything about it?

A. No, sir.

Q. Is that the picture of the mat built by you?

A. Yes, sir.

Q. Is it a good photograph of the mat built by you?

A. Yes, sir.

Judge-Advocate: (Showing photo) This is the photograph which is now before the Court.

Witness: That was a mat built at Hilton Head, S. C., I think.

Q. Do you know anything of its construction?

A. Oh, yes, sir.

Q. That is the one in regard to which you have been testifying?

A. That is right.

Q. How does it compare with those you have testified you had seen before?

A. You mean in Augusta?

Q. Yes?

A. Well, the mats there, of course, were not so large as that; they were smaller. They were practically the same except, of course, in Augusta the brush was quite different.

Q. How many single course specification mats were made under your supervision?

A. Six.

Q. How many did you have made out of the bundles you found at the landing?

A. Six.

382 Q. Was that pile in regard to which you have tesitfied entirely used up?

A. Yes, sir.

Q. Where did you get further material?

A. That is, at Hilton Head it was entirely used up, but at Foot Point there were some few bundles left.

Q. Where did they get material to build the mats after this pile was used up?

A. At Foot Point; they didn't build anything more at Hilton Head; but at Foot Point, the stuff used for building these other fascines they have there now was gotten about from a half of a mile to a mile of the place where the mats were built,—much better stuff, too, than they had in these bundles.

Q. The quality of the material improved, then, after you made these mattresses to which you have testified?

A. Yes, sir.

Q. Were there other bundles scattered around in the woods at that point?

A. Yes, sir.

Q. You saw them yourself?

A. Yes, sir.

Q. Do you know if they were hauled to the place where the mats were constructed?

A. These bundles that were scattered in the woods?

Q. Yes, sir?

A. A great part of them were; some few were left out there at a place where they could not haul them from; it was boggy, and, at that time, they could not haul them out.

Q. (Handing witness paper) Please read that 38th paragraph entitled Fascines?

A. (Reading) "All fascines will be made of live brush "of cedar, water oak, myrtle, sweet gum, or any other variety "of wood approved by the Engineer Officer in charge. The "fascines will be from twelve (12) to twenty (20) feet in "length, and must be compressed tightly by an approved

383 "form of choker, to a diameter of nine (9) inches at "intervals of two (2) feet, where they must be bound

"firmly with wire or tarred rope of approved strength. The "brush used shall be as straight and well trimmed as can "be obtained; the fascines shall be carefully and thoroughly "made and handled with care. They are to be placed in the "work singly, or in mattresses, in such places, quantities, and "manner, as the Engineer Officer in charge may direct. When "made into mattresses the fascines will be packed together "and secured by binding poles joined by tires of wire or "tarred rope not more than two feet apart, the form and di- "mension of mattresses and the method of their construc- "tion to be such as the Engineer Officer in charge may ap- "prove. For measurement the fascines shall be piled on "shore or on barges in such way as the engineer officer in "charge may direct."

Q. The mattress built by you was built in accordance with these terms?

A. Yes, sir; with those two exceptions, and that was the wire and the grillage poles.

Q. Is that the same character of mattress as you made for the Twiggs contract,—the same specification as for the Twiggs contract?

A. Yes, sir; except they were trimmed a great deal closer

Q. In making this mattress under the direction of Capt. Gillette, did you comply literally with Capt. Gillette's instructions?

A. Yes, sir; I trimmed the brush, and got the kind of brush, at that time the best that could be obtained,—at this place; that is, of what they had.

Q. How were you to tie them?

A. They were properly choked and tied, and, while I was at their camp, they doubled the twine. They used this spun-yarn with probably a little tar on it, and put double yarns around at intervals of a foot to a foot and a half.

384 Q. Was anything said to you by Capt. Gillette as to what rope should be used in tying them, or what material for tying them should be used?

A. Yes, sir; there was something. As far as I can remember, Capt. Gillette told me about choking them,—having them properly choked, and he read, or gave me the third design of the specifications, and then afterwards said, "Just follow the specifications," or something to that effect; I disremember exactly.

Q. The specification that you have just read said that they

must be bound firmly with wire or tarred rope of approved strength?

A. Yes, sir.

Q. Did you use either of those materials?

A. No, sir.

Q. Why not?

A. Because the contractors didn't have either wire nor tarred rope in camp, and I told them they would have to get this; and I wrote Mr. Cooper a letter to ask him about it, and he didn't answer. Well, I took this rope-yarn, and by using two strands of this, it was equal to tarred rope. I tested it, and afterwards found out it was about as strong as the tarred rope, and I put it at intervals of a foot apart. Then when I first met Mr. Cooper, he said—

Judge-Advocate: No matter what he said.

(At this point in the proceedings, 12.25 o'clock p. m., Reporter W. O. Tarver was relieved by Reporter Geo. T. Cann.)

385 Q. Do I understand you to say that it took 8 bundles as prepared and cut up to make one according to the specification of the same length?

A. Yes, sir.

Q. How many square feet of the old style mattress would one of those bundles behind you make, those bundles that you have inspected there?

A. About 15 square feet.

Q. In making your estimate of the cost of the old style mattresses, how much did you allow for the cost of one bundle?

A. Old style, 2½ cents per bundle.

Q. Upon what do you base your estimate?

A. Of course, I inquired as to what they cost.

Q. Do you know what they cost?

A. Only by what I heard.

Q. You saw no account or statement and have no personal knowledge of what they did cost?

A. No, sir, except that.

Q. Your estimate then was based upon that value?

A. Yes, sir.

Q. 2½ cents per bundle.

A. The reason I dont know that is because the first day after I got into this camp I went out on the works and told them those bundles would not do and they stopped at once,

so I did not get a chance to find out the actual cost of those bundles, only by being told.

Q. Were those bundles cut by the employees of the contractors, or did persons cut them on their own account, selling them to the contractors if you know?

A. I know that the contractor's foreman hired those men to cut those bundles, that is to cut the bundles that were used before.

Q. At day labor rates or by the bundle, do you know of your own knowledge?

386 A. By day labor rates, but in this way, they paid so many men so much a day in some cases.

Q. Do you know this?

A. No, sir.

Cross-Examination.

Questions by Mr. Charlton.

Q. Mr. Hale, you stated just a moment ago that you knew that the contractors did this work by contract,—do you know that from your own knowledge?

A. That the contractor did this work?

Q. Got this labor by contract. Do you know anything at all about how they got their labor and how they paid, except what other people told you?

A. Except what the men themselves told me.

Q. Do you know it except from what other people told you?

A. I have got no paper, no sir.

Q. You have no actual knowledge except what was told you?

A. I was there.

Q. I ask you to answer my questions. If that was not hear-say?

A. Of course, about those bundles.

Q. That is you don't know anything at all about the employment of labor?

A. That is hear-say, certainly.

Q. Now, I want to put you on notice, kindly let me do so?

A. Certainly.

Q. When I am asking you a question, unless I ask you for the information of other people, don't give it.

A. All right.

Q. What has been your experience in Government employment, when did you first go in?

A. May, 1891.

Q. That was at Augusta?

387 A. No, sir, that was in Savannah on a little survey at Savannah.

Q. How long did you stay here?

A. A very short time.

Q. Then where did you go?

A. In 1882 I was down at Mayport, Florida under Mr. Geiseler.

Q. What character of work did you do there?

A. Surveying.

Q. Then your next employment?

A. My next employment was with Captain Carter.

Q. At what point?

A. Surveying, I think mainly upon the survey.

Q. And your next employment?

A. I have been an inspector some.

Q. How long were you an inspector under Captain Carter?

A. At different times I was an inspector on dredge work and dredge material.

Q. How long were you employed as an inspector by Captain Carter as an inspector of mattress material and mattress construction?

A. That was the time I went to Augusta.

Q. How long was it?

A. I went to Augusta in December.

Q. Of what year?

A. 1893 and stayed there until January 7, 1894.

Q. You were an inspector at that point of mattress construction and fascine construction?

A. That is, I was inspector of dams.

Q. And you were inspector of mattress construction and fascine construction?

A. No, sir.

Q. That was no part of your duty?

A. No, sir.

Q. You are familiar with the brush that grows up there?

A. No, sir.

388 Q. The brush that grows in the woods?

A. No, sir.

Q. Have you never testified that that brush there is straighter?

A. The brush I saw in those fascines was straighter.

Q. That would be the natural appearance of it when growing?

A. Yes, sir, I suppose so.

Q. Now, do you mean to tell the court, do I understand you to state to the court that the fascines at Augusta were military fascines?

A. Well, I call them military fascines.

Q. Why do you call them that?

A. That is, I say there were built according to the specifications, if you tell me what is a military fascine I will tell you what they were.

Q. No, I am not on the stand, I want you tell me that.

A. A military fascine is built of rods, that is what a military fascine is.

Q. A military fascine is a fascine built of rods?

A. I suppose so.

Q. Do you know?

A. I say if a military fascine is built of rods those were pretty nearly military fascines.

Q. Did they have any leaves on them?

A. No, sir.

Q. Did they have any twigs on them?

A. Very few.

Q. They had some few twigs but had no leaves?

A. No, sir.

Q. It was in the dead of winter?

A. It was in winter.

Q. Did you expect them to have leaves on them at that time?

A. No, sir, but some bushes do have leaves on them in winter.

Q. No doubt that is so.

389 A. None of those fascines had any on them.

Q. Did they pick the leaves off them?

A. I dont know how they did it.

Q. Do you come from that part of the country.

A. No, sir.

Q. You are familiar with the brush up there, whether it loses its leaves?

A. No, sir.

Q. You know down here quite a quantity do not lose their leaves?

A. Yes, sir.

Q. You know up there it is higher up and colder, and they do lose their leaves?

A. I dont know.

Q. Did you ever hear those inspectors call those military fascines?

A. No, sir.

Q. Did you ever hear the expression, "brush fascine"?

A. No, sir.

Q. They just called it a fascine, generally?

A. They just called it a fascine generally.

Q. When did you first hear the term "military fascine"?

A. I have heard that ever since I have been on the work.

Q. Where at?

A. I have heard it employed in a great many places.

Q. Chiefly since you have been in the Government employment for the last 5 or 6 years?

A. No, sir.

Q. Did you ever see a military fascine, to your knowledge before Captain Gillette came here?

A. No, sir, except in Augusta.

Q. That is your idea that that is a military faxcine?

A. That is my idea.

Q. When did you first acquire that idea, Mr. Hale, 390 that those fascines up there were military fascines?

A. Well, that is what I say, if a military fascine was built of rods they are military fascines.

Q. When did you first get the idea that a military fascine was built of rods?

A. My idea about a military fascine being built of rods is generally the way I hear it as being built.

Q. I want to get whether you heard that expression and explanation before you came under the employment of Captain Gillette?

A. I have heard of a military fascine, not knowing whether it was built of rods, or what it was built of?

Q. Have you got it under the employment of Captain Gillette, who explained to you what a military fascine was?

A. He has mentioned something of the kind, he did not explain that the rods—

Q. What did he call them?

A. He just said brush closely trimmed. I dont remember of his ever saying the word rods to me at all.

Q. He did not describe what brush closely trimmed was, what was the meaning of that expression?

A. He just said military fascine.

Q. He just said a military fascine is brush closely trimmed, or brush closely trimmed is a military fascine?

A. No, sir.

Q. He didn't mention a cylindrical bundle of rods closely trimmed is a military fascine?

A. No, sir.

Q. How many conversations did you have with him?

A. Very few.

Q. About how many?

A. I don't know any, except in that case.

Q. I understand you to say you were an inspector of dam construction at Augusta, not of fascines or of mattresses?

391 A. No, sir.

Q. Then the next employment in which you were thrown in connection with mattress construction was on what date?

A. The 1st of August.

Q. 1st of August '97. Was not that the very first opportunity you had ever had in an official or responsible capacity, mattress or fascine construction?

A. Of building a fascine, that was the very first.

Q. Before that you had seen it incidentally, but it was not a part of your duty?

A. It was a part of my duty to see whether those fascines were tightly wrapped with wire, and, if not, to throw them out.

Q. Your first experience with building them was during your last employment?

A. That is my first experience.

Q. Now, I want you to state to the court the full conversation had between you and Captain Gillette when he called you in there and showed you the specifications and asked you if you understood them?

A. The full conversation I cannot remember exactly except Captain Gillette told me those fascines must be tightly compressed by an approved choker and they must be closely trimmed and are all to be the same as the specifications stated, as far as I remember.

Q. He did not explain what closely trimmed meant according to his idea?
A. Not at that time.
Q. When did he explain that to you?
A. Some other time since then.
Q. About how long since then?
A. Well I dont remember exactly the time.
Q. Within the last two or three days?
A. No, sir.
Q. Well, within the last week, Mr. Hale.
392 A. A week or so, I was in the office when they asked about it and I spoke about it forst.
Q. Why should you, if you understood the specifications and knew how to build fascines according to the specifications, why should you ask that explanation of Captain Gillette?
A. I was only asking about Military fascines, if those were called military fascines, any faxcine made of trimmed brush closely trimmed, I was told was a military fascine, I wanted to know if this was a military fascine.
Q. You only found that out a week ago?
A. I dont know exactly the time.
Q. Within a week or so?
A. Say that time.
Q. Now, you went over there, understanding the specifications, you had no trouble about that did you?
A. No, sir.
Q. Captain Gillette at that time made no detailed explanation except what you have stated?
A. Except what I have stated.
Q. And he turned you loose over there to construct mattresses?
A. He told me to report to Mr. Cooper, I went down to Tybee and reported to him and he told me what to do.
Q. You built up the mattresses?
A. Yes, sir.
Q. You also brought some of those bundles of brush here?
A. Yes, sir.
Q. Where did you first catch hold of the expression "bundle of brush"?
A. I have heard it used in every case, I have never heard one of the contractor's foremen say "fascine".
Q. You never have?
A. No, sir.

Q. Have you ever heard them call it at all?
393 A. They called it "bundles of brush".
Q. You did not get that from Captain Gillette?
A. No, sir, I have known that all the time. I have said in talking "a bundle", I may have said "fascine".
Q. That was inadvertantly done?
A. That was accidental, yes, sir.
Q. I say you brought over some of those bundles of brush?
A. Yes, sir.
Q. All by yourself?
A. No, sir, the ones that I brought from Foot Point I did bring up myself.
Q. Are those the ones you brought from Foot point?
A. There are 5 or 6 and there were three brought from Tybee.
Q. The ones you brought from Foot Point you brought from Foot Point yourself. I dont mean the manuel labor, but was anybody else with you?
A. No, sir.
Q. I understood, I may be in error about that, I understood Mr. Cooper to say there were two people.
A. That was Mr. Keating and Mr. Austin, who got three of those bundles.
Q. Probably so, some of those bundles were brought up by Mr. Keating and Mr. Austen?
A. Yes, sir.
Q. Who was Mr. Keating?
A. He was an inspector here.
Q. Who was Mr. Austen?
A. He is a clerk in the office.
Q. Are both now in the employment of the government?
A. Yes, sir.
Q. Can you state upon your oath, Mr. Hale, whether or not those are rejected bundles of brush?
A. I can, those I brought from Foot Point are not rejected.
394 Q. You state that positively?
A. I state that positively, that they are not rejected bundles of brush, or less they would not have been hauled to the camp.
Q. Where did they reject bundles of brush or fascines?
A. One case that I know of—
Q. Your experience has been rather limited?
A. Yes, sir.

Q. In your experience, the only place a fascine is rejected is where it is built?

A. Rejected by the foreman, that is what I mean.

Q. None was ever rejected in the camps?

A. I have never seen any, I rejected a great many while I was building those fascines because there were not any parts in it that I thought they ought to have.

Q. You rejected everything that had a twig on it?

A. No, I left a few twigs.

Q. With the exception of the construction of this specimen of model mats that you presided over, will you tell this court what other work you have been at for the United States givernment since that time except concerning yourself with the Carter case?

A. Yes, sir; I was months down on the surveys down at Fernandina for Mr. Geiseler, the Assistant-Engineer.

Q. It was getting a profile for use in this case?

A. I dont know, I suppose so, I did not ask.

Q. What were you doing?

A. I dont know what, I was observing, taking angles, I did not ask what they were getting it for, or anything about it.

Q. Dont you know that you were down there looking up evidence in this Carter case?

A. No, sir, I didn't know that.

Q. Have you learned it since?

A. I learned it by the profile that is being platted.

Q. You know now by what is being done with the re-
395 sults of your labors that that was the object of your visit down there?

A. I know that now.

Q. That accounts for one month, which month was that?

A. I think that was October.

Q. And in November, what did you do for the Government?

A. That started in October and lasted in a part of November.

Q. Well, when that left off.

A. I have been on a little survey up the river here examining shoal places in front of the Central Railroad slip.

Q. How long did the examination in the shoal place in front of the Central Railroad take?

A. I think that was two days. It lasted three or four

days, probably five days, I don't remember exactly, to complete it all.

Q. Have you been down on the breakwater?

A. Yes, sir, I was there before the survey at Fernandina.

Q. Were you there also getting a soundings to plat that for the same purpose?

A. For the breakwater? I have not seen any plats of the breakwater.

Q. After that what did you do?

A. I was on that survey, as I said, and after that I was up the river for Mr. Geiseler putting up tide gauges.

Q. How long did that take?

A. I was 2 or three days here getting ready for that work.

Q. What month was that?

A. The last of December.

Q. That didnt take but 2 or 3 days?

A. Yes, sir.

Q. How long?

A. Off and on I was pretty nearly the whole time.

Q. What do you call the whole time?

A. Well I was on it about the middle of December?

Q. And then from then on?

A. From then on? It was after that time that I went 396 up the little Back river and put up the tide gauges.

Q. That would only take a day or two?

A. A day or two.

Q. And the balance of the time has all been given to the Carter case, has it not?

A. Well, pretty much.

Q. What has been your particular labor in regard to the Carter case,—whom have you seen?

A. Whom have I seen?

Q. Yes.

A. I have seen a great many.

Q. Sent out by Captain Gillette to see them?

Judge-Advocate: I must object to that question. It is admitted that this witness has been at work in the interest of the prosecution, or in the interest of the Government, in the preparation of this case.

Mr. Blair: We withdraw the question.

Mr. Charlton: Yes, rather than have the Court retire on the question.

Judge-Advocate: I dislike to offer any objection; I like to allow the fullest latitude.

Mr. Charlton: We are obliged, Colonel, but we do not want anything but our rights.

Q. How are you carried on the rolls, in what capacity?

A. Well, I have been carried on the rolls as an inspector.

Q. Now?

A. Now?—I have not noticed.

Q. You don't know?

A. I did not notice it or pay any attention.

Q. For the last month—how—have you been carried on the rolls?

A. I think as an inspector; I do not remember distinctly noticing I have been an inspector off and on the roll on survey, if that is what you want.

397 Q. For the last month you dont know how you were carried there, and you have done no work as an inspector?

A. No work as an inspector, but I did surveying, I made preparation for surveying, I never noticed carefully, it was there too, I just didn't pay any attention to it when I seen it.

Re-direct Examination.

Questions by the Judge-Advocate:

Q. All work on the contract has been suspended, has it not?

A. Yes, sir.

Q. Now, Mr. Hale, has Captain Gillette given you any instructions beyond those pertaining to the manufacture of that mattress in accordance with the terms of the specifications?

A. No, sir.

Q. In explaining to you the meaning of a military fascine, was it in answer to a question by you what was a real military fascine?

A. Yes, sir.

Q. Was I not present?

A. I think you were, yes, sir.

Q. I was talking with you about the testimony which you would give in this case?

A. Yes, sir.

Q. And it was for your information?

A. Yes, sir, I wanted to know what a military fascine was, whether they called those military fascines, or no.

Q. Did it make any difference whether they were mili-

tary fascines or fascines of a different character, so long as they filled the requirements of the specifications?

A. No, sir, that is what I was guided by all through the work.

Q. Is the construction of a mattress a very intricate and difficult piece of labor for an intelligent man?

A. To do the work, it is.

398 Q. To do it, or have it done, having the labor under his control?

A. Yes, sir, to be carefully made it should be.

Q. You consider yourself competent, you understood the specifications fully?

A. Certainly.

Q. You considered yourself competent to construct that mattress or have it constructed?

A. Yes, sir.

Q. And in your judgment you did comply with the requirements, except insofar as the material used in the fascine?

A. Yes, sir.

Q. Were the poles used in the construction of the fascines made by you trimmed as much, or not as much, as the poles used in making the fascines under the Twiggs contract?

A. They were not trimmed as close, it was because I did not go to extremes with it.

Q. You mean extremes, I did not exactly understand that?

A. That is according to the specifications, of course, I could have you might say, taking the whole pile make it one third of what I did, I mean by taking the brush as good as I could obtain, of course, I didn't want to throw away a stick that was probably the least crooked or anything like that, and the others were perfectly straight in Augusta.

Q. That is, in Augusta they were all straight?

A. Yes, sir.

Q. And better trimmed?

A. I think they were, yes, sir.

Q. And that was a very strict and literal interpretation of the specifications?

A. Yes, sir.

Here the Court took a recess at 12.50 o'clock P. M. for 10 minutes. Court met pursuant to recess at 1 o'clock P. M.

Evidence reported by George T. Cann, as reporter, January 22, 1898.

399 ERNST AUGUST GEISLER, a witness for the prosecution, sworn, testified as follows:

Q. What us your full name?
A. Ernst August Geisler.
Q. What is your employment?
A. I am a civil engineer.
Q. Where are you employed?
A. In the United States Engineer's office, Savannah.
Q. Under Captain Gillette?
A. At present under Captain Gillette, yes.
Q. How long have you been so employed, Mr. Geisler?
A. Off and on, I suppose for about 20 years.
Q. But how long in your last service in this Engineering District?
A. In this Engineering District I have been twice, I came here first in 1889 and stayed here about a year and a half and then went to the St. Augustine District and stayed there a year or a year and a half and then returned here in the Spring of 1893. Since the Spring of 1893 I have been here uninterruptedly.
Q. Then you served under Captain Carter partly during that time?
A. Captain Carter, yes.
Q. Until Captain Gillette arrived?
A. Until Captain Gillette arrived.
Q. What has been the principal article used in the construction work since you have been here?
A. Well, mattresses, fascines and stone.
Q. Are you familiar with the terms of the contracts now in existence for the improvements here?
A. Yes.
Q. You are familiar with the specifications?
A. I beg your pardon, I did not quite catch that question. Not with the terms of the contract, I would not say that, but with the terms of the specifications.
Q. You are familiar then with the specifications as
400 to the three types of mats, are you?
A. Yes.
Q. Have you made any estimate of the cost of each type per square yard?
A. I was asked to do so by the Board of Investigation that convened here a short time ago, I did so, but in regard

to that estimate I would like to say that since then I have revised that estimate. The estimate was made under unfavorable circumstances. I was not at the time able to get full information in regard to certain details: I have since supplied that information and revised the estimate, I would not like that estimate to go in.

Q. Yes, you are here as a witness to state any conclusion you have arrived at and I ask you—

A. Exactly.

Q. To give your estimate of the cost of the first type.

A. I estimate it 68 cents per square yard, a log mattress of the first type.

Q. How do you reach that conclusion, Mr. Geisler?

A. I have gone into the various items. In the first place, I suppose it is based on the size of a mat 75 feet by 50 feet. I suppose that mat to be constructed of 100 logs, partly 50 feet long and partly 25 feet long, and those logs I suppose on the average to cost 55 cents on the stump, that is based on the information that I received from the proprietor of timber land in the vicinity of Cumberland Sound. He proposed to furnish logs 50 feet long on the stump at 75 cents. Now, my computation here is simply in proportion with that. Then I presume that the cutting of those logs will cost $6.25, 2 men at $1.25 a day cutting 40 trees in one day, that will give $6.25. Then comes the item of hauling, I suppose two men at $1 a day and one double team at $1.50 a day will haul 16 logs a day, which will make the whole cost $21.87; all together that will make the logs cost at the camp $83.12; whereas, in my first estimate, which I forst submitted I said
401 $100, which is therefore too much. Then there are 44 binders and poles 25 feet long at 6 cents, which is $2.64, then there are 500 spikes—there are 500 crossings, all together between the binders and logs, so there must be 500 spikes, 10 inches by 5/8 of an inch weighing one and a quarter pounds each, which would 625 pounds of iron at two and a half cents a pound is $15.62-1/2 cents; then there is the privilege of cutting brush, this information I obtained from the same party on whose land the Atlantic Contracting Company has been cutting brush, the privilege of cutting brush they paid for at the rate of $5 a mat, indifferently whether that mat was heavy or light or a large mat, the contract was $5 a mat, so I have put in the same amount here. Then there is the cutting and hauling of the brush: Now, there I have estimated 250 bundles to be hauled, the number of those

bundles becomes clear—how I got that becomes clear when I speak of the other fascines or the 8 course mattresses of the third design, at the time the contractors were made to construct the mats according to the specifications: They had a number of those bundles on hand, and in order to use them they put them into the first mats that were constructed according to the specifications, and according to count—

Q. Your estimate is upon an assumed case of labor and an assumed amount of work done, as I understand.

A. Yes, I just want to say how I got at it, that's all.

Q. Well, if you know that, those things can be done at that cost, you can state it.

A. Very well. Cutting and hauding 250 bundles at 5 cents, that is $12.550, then there is the labor of building the mat, one foreman three days at $3 a day, which is $9, 16 laborers at three days at $1.25 each for the log mat is $60, then there is a tug boat half a day, to and from the camp towing the mat, I suppose the mat will be built in water and not on a gin barge, $12.50; I suppose the rent of the tugboat to have been $25 a day, then there is a tug boat day and a half sinking the mat $37.50; then there is sonsumption of rope $8, 25 percent interest, amortization and repairs 402 for $3,000 plant, distributed on 120 mats, which I suppose to be the number that can be sunk in a year, $6.25, all together $252.13. Then losses 7-1/2 percent on that and contingencies 5 percent, together 12-1/2 percent, $31.52, which makes a total of $283.65.

Q. Taking into consideration then all those features that you have recited you make the cost of a mattress 68 cents a yard?

A. Making and sinking it.

.Q Putting it in place?

A. Putting it in place, yes.

Q. Please give to the court the same information in regard to the second specification.

A. The second I make 56 and 4/5 of a cent per square yard.

Q. Have you given the court the same information,

A. Yes, sir, 56 and 4/5 of a cent per square yard.

Q. And that is the cost of it? I mean by the same calculation?

A. I made the same calculation, going over all those items which I enumerated just now in a similar way.

Q. Now, as to the type of mattresses provided for in the third design of the specification?

A. I make that a little less, 43 and 1/5 cents per square yard placed in the works.

Q. Arrived at by a computation of the same character?

A. Yes, sir.

Q. Are you familiar with the mattresses as actually used under the existing contract?

A. Very little I have really seen. You refer to the multiple course mattresses, I suppose under the contract of 1896?

Q. The multiple mattresses, the course mattresses?

A. Under the contract of 1896 I dont think I have seen one of them. In former years I have seen some of them.

Q. When did you see one of them?

A. Some time during the contract before that, pos-
403 sible 4 or 5 years ago.

Q. That was the contract of 1892?

A. The contract of 1892, yes.

Q. What was the estimate of cost of the mattresses then being used?

A. I have made an estimate now on that.

Q. What is the estimate.

A. In place 11-2/5 cents per square yard.

Q. I would like to know some particulars of that last estimate, Mr. Geisler?

A. In the first place there is the privilege of cutting brush, the same as before, $5; then there is cutting and hauling and binding 2000 bundles at 9 cents a bundle, that information is according to actual account by Mr. Hall, $180; then there are 522 grillage poles 25 feet long at 6 cents, $31.32; then there are 9000 linear feet of wire, 600 pounds at 2 cents, $12; then there is the labor for building the mats 2 foremen, 1 day, at $3 a day would be $6, and 50 laborers, 1 day, at $1 a day, $56; then there is a tug boat, 1-1/2 days, sinking the mat, $37.50; $25 interest, amortization and repairs on a $9000 plant, in this case distributed among 150 mats, assuming that 150 of those can be built in a year, $15; consumption of rope $8; a total of $344.82; then losses, which in this case I have assumed at less, the mats being on gin barges, transported to the place on gin barges, 5 percent, contingencies 5 percent, $34.48, which makes a total of $379.30.

Q. How many square yards?

A. 11-2/5 cents per square yard, that is on a total square yard number of 3,333.33 on a mat of 8 courses, 75 by 50, 8 courses high.

Q. It cost sunk in place how much?
A. $379.30.
Q. How much per square yard?
A. 11-2/5.

Q. Do you know the contract price of mattresses at 404 Cumberland Sound and at Savannah?

A. For Cumberland Sound it was $1.10, and I think for Savannah 95 cents. I am not sure about that, I think it was.

Cross-Examination.

Questions by Mr. Charlton.

Q. Mr. Geisler, what has been your specific duties in the office of the Engineer officer here?

A. During the first years they have been mainly surveys and computation and investigating of a theoretical character. During the last year it has been principally practical work, construction work.

Q. Well, what do you mean by construction work?

A. I mean the construction work, work in connection with the work now being done on the constructions at Tybee, I was engaged in getting up specifications, I, with Captain Carter, drew the specifications for it, I made the estimates for it.

Q. So that your work prior to the work on the fortifications here was generally what you call hydrographic?

A. Generally hydrographic. The period is so long I cannot cover the entire period of my duties, there were other duties, I was in charge of the draughting room, and a good many things arose in the course of years in the draughting room which I cannot recall.

Q. During the course of your employment, has the construction of mattresses and fascines come under your observation?

A. Never, not here, but it had otherwise come under my observation, it has never been a part of my duties.

Q. Where did it come under your observation?

A. I have seen mattresses and fascines constructed at the mouth of the St. John's river.

Q. Have you any practical knowledge about the construction of mattresses and fascines?

405 A. None whatever, beyond what I have seen at the places I have stated.

Q. Where your mind was not charged with it?

A. Not at all, I had nothing to do with it.

Q. Your estimate that you have given, of course, is based upon information gathered from other people?

A. Yes, sir, more in the way of confirmation than anything else.

Q. Of course, that comes to you with such errors as the people themselves will be guilty of?

A. Yes, still, at the same time, I have always exercized in many respects, I was able to check to a certain extent.

Q. You say that your first estimate, which you have since changed was gotten up at the request of the Board?

A. No, not at the request of the Board, it was handed in to the Board, it was gotten up under instructions of Captain Gillette, I was sent to Fernandina and found there a letter of instructions to my predecessors from Captain Gillette instructing him to make those estimates, at the same time, before I left the Savannah office, I received instructions to the same effect from Captain Gillette.

Q. Who was your predecessor?

A. Mr. Marion Twiggs.

Q. Did Captain Gillette give you other instructions when you went down there in addition to the making of estimates?

A. I suppose he did, if you can name anything, I cannot recall them, he simply told me to go. Mr. Marion Twiggs became ill and had to leave very suddenly and I was told to go and take his place.

Q. Then the work you were sent upon was work done in connection with the Carter prosecution?

A. Not, when I went down there.

Q. To get information for the estimates?

A. Well, I suppose so, yes.

Q. At what time was that Mr. Geisler?

406 A. That was in the beginning of September.

Q. Did Captain Gillette give you any other instructions as to the plan of prosecution, anything you were to do there?

A. I suppose you refer to my second sojourn.

Q. Possibly so, sir.

A. I returned from Fernandina about the 20th of September, I think, at the time the Board of Investigation convened here, then I was sent back to Fernandina about the middle of October with instructions to make a survey of the jetties.

Q. Were you given any additional instructions to inquire of any persons concerning Captain Carter?

A. I dont recall.

Q. Or concern ng the contractors, were you not instructed to look up possible creditors of the contractors and get information from them?

A. Captain Gillette, at one time, sent me a pencil note making such a request.

Q. Did you acceed to it?

A. No.

Q. What did you reply to it?

A. I replied that the only way I could see to get the information was to advertise in the papers and ask such creditors as they would to file their names at the office in Fernandina.

Q. Why did you refuse to comply with those instructions?

A. Because I did not know how I could do so.

Q. As far as you can, I want your answer.

A. It is not oral, it is on file so it can be very well established.

Here the Judge-Advocate objects to the witness stating the contents of the letter, offering to get the letter for the accused.

Q. Did you never give oral expression to Captain Gillette at all upon that subject?

A. Well, I may have, yes, I suppose I did.

407 Q. Will you be kind enough to tell us what you said?

A. I know that, I suppose I have, expressed to Captain Gillette it was not very much in my line that I could not do such things, that I was not very expert at getting information, I suppose I used words to that effect.

Q. Don't you remember what your language was, was not it stronger than that?

A. Well, yes, I believe I said to Captain Gillette I was not in the detective line, something like that. No, I believe my words were, I recall them now, that I was not gifted that way, I used the word "detective."

Q. Didn't you use the word spy?

A. No, I did not. Yes, no, not to my recollection.

Q. Have you been engaged on any other work connected with the Carter prosecution by Captain Gillette, I mean outside of the ordinary lines of your duty of preparing charts and things of that sort. I have in my mind the Hutchinson Island affair?

A. The Hutchinson Island affair, yes.

Q. Were you directed by him to look into that?

A. I was instructed by him to look into that, that was up before the Board of Inquiry.

Q. Well, now, were you required to do anything else in regard to this prosecution, which you declined to do?

A. Well, there was something at the time I gave this oral reply to Captain Gillette, I really dont recall what it was, I have forgotten what it was.

Q. You cannot recall that at all?

A. No, I cant recall that I dont know what it was. I believe that was, at the time I said this to him. What it was I dont know, it might occur to me, I remember it was something entirely harmless.

Q. If you cant recall it how can you recall its nature?

A. I can recall my feeling at the time in regard to the matter.

408 Q. Mr. Geisler, You have been here quite a long time connected with this office, what was your understanding about these so-called bundles of brush. Did you ever hear them called "fascines" before they were put in the mattresses under Captain Carter's administration?

A. Well, yes, I believe I did.

Q. Is it not a fact, Mr. Geisler, that this term "bundles of brush" and "military fascines" has sprung up here since Captain Gillette has come?

A. Yes, I should judge so. That is rather the distinction between military fascines and other fascines. I have never heard it made before. In fact, Captain Gillette explained to me what it was.

Q. You got your impression from him then?

A. I got my impression of what a military fascine was from him, all I know about a military fascine I got from him certainly.

Q. Now, you have seen this work, you know the results of it, which is the better fascne for work in this river, Captain Gillette's military fascine or Captain Carter's brush fascine?

A. I don't believe in Captain Gillette's fascine for work of this kind and I have told him so. I believe that fascine is the best which has the greatest number of fine twiggs or branches in it, and that fascine is the poorest one which has the fewest number of branches in it. In both cases the mattress must be well choked.

Q. Will you explain why you have that preference?

A. I have that now, and for the reason that the office of

the fascine is to hold the bottom, that is, hold the particles of the bottom to protect against scour. Generally this office is performed by friction between the particles of the bottom and the superficial area of the component parts of the fascine. That fascine that has the greater superficial area will be the best to hold the particles of the bottom on account of the friction with them. Now, if you take the two extremes, taking a single log 9 inches in diameter that would only have a very small superficial area. If a fascine is composed
409 of sticks of 1/4 inch diameter the sum of the superficial areas of those sticks would probably be 6 or 7 times the superficial area of the log, if you make those sticks still smaller it would be still greater, of course there is a limit, but theoretically it would be the case. That is why I would prefer the brush stuff down to the practical limit.

Q. The fascine as actually used by Captain Carter has accomplished its work?

A. Judging from experience, and what we see in Savannah Harbor, it is to be presumed that it has.

Q. Do you happen to know how much depth of water has increased in the Savannah River since Captain Carter has had charge?

A. Yes, I could not say exactly since he took charge, I cant say, but comparing it with the time I first came here in 1889, the available depth of water was then about 13 feet at low water and it is now 20 feet at low water.

Q. What is the rise of tide, the average rise of tide?

A. The rise of tide down at the mouth is 6¾ feet and at Savannah it is 6 feet, that would give you a gain of 7 feet.

Q. The project contemplated 26 feet at high water?

A. The project contemplated 26 feet, the result was attained at the end of the fiscal year of 1896.

Q. Do you know whether or not it has been obtained within the appropriation?

A. I think I can safely say it has, I dont know the exact figures but I believe it has.

Q. And within the estimate of the project?

A. Within the estimate of the project, too, practically, it may be a little different, I dont think it is, I think it is within the estmate of the project.

Re-direct Examination.

Questions by Judge-Advocate.

Q. Who got up the project and made the estimate for that contract of 1892.

410 A. The project?

Q. Yes.

A. Well I had a good deal to do with it.

Q. Who was responsible?

A. Captain Carter, certainly.

Q. You were the engineer.

A. Yes.

Q. It is your business to make estimates?

A. Yes.

Q. Estimates are usually made on authority of such statements as can be made by you relative to the value of labor and material?

A. Certainly, I dont put much store in the fact that I have not had practical experience with those mats, I think that notwithstanding that I am perfectly competent to make the estimate.

Q. You have ever constructed a building?

A. Repeatedly, yes.

Q. Have you never superintended the construction?

A. Oh, yes.

Q. Becoming familiar with the cost of material?

Q. Yes, I have constructed buildings as long as 20 years ago.

Q. Then when a record of those are estimated, it would be based upon your knowledge of material for buildings?

A. When it comes to making an estimate upon buildings I would be more familiar with the details, I dont know that that would hold good because in building there would be more material than in these very simple mats.

Q. In making an estimate you would not hesitate to estimate upon values outside of those of which you have immediate knowledge?

A. Certainly not, only of course, I should have to go to necessary sources for information.

Q. Which is the usual course pursued by gentlemen of your profession?

A. Undoubtedly.

411 Q. Now, you have stated what in your judgment would be an ideal mattress for use—

A. Fascine.

Q. A fascine for use?

A. Yes.

Q. In using that did the question of cost enter at all into your judgment?

A. No, I say that simply the office of the fascine is to conform to the shape at the bottom, and whichever the best performs this office is the best fascine.

Q. The question of the value then did not enter into your mind?

A. When I made the statement just now, no.

Q. Could a fascine of that ideal character be constructed under the specifications in this contract?

A. Well, the specifications say the brush which goes into the fascine shall be well trimmed, now, I do not know that that would mean that all the small branches should have to be trimmed off, I doubt that. That, of course, would be a question which might be answered differently, I should judge that under those specifications it would be quite admissable to put small stuff as long as it is proper stuff and as long as the whole thing can be well choked afterwards, into a fascine. It seems to me that the term "well trimmed" does not forbid that.

Q. If you desired to secure for the government fascines of that ideal character how would you prepare the specifications?

A. Well, probably that is a question really about which I have not thought, I suppose I might word the specifications somewhat differently, possibly I might word them so as to express definitively that small stuff is admissable, possibly that would have been the correct way to do it, I think I would do that in fact.

Q. If it was your intention in the construction of this ideal fascine to use bundles of brush you would set it forth in the specifications, would you not?

412 A. Well, every fascine has to be constructed of bundles, now there is a mattress lying upon the other side of the river now, 100 feet by 50; the fascines in that mattress are 100 feet long, it is impossible to get brush 100 feet long, you have to get brush, say 10 or 12 feet; I believe they would generally average 15 feet. Those bundles are transported to the mat camp. It is the most handy form of transporting them and when they are brought to the mat camp they are put together and a fascine made out of them.

Q. Would it be necessary to say anything at all about trimming in the specifications?

A. Well, yes, I think it would; for instance, if the stuff was too crooked it would interfere with properly choking the fascine, then if the branches were standing at almost right angles from the pole, well, then, I suppose that would interfere with the choking, then the leaves should be trimmed off, so, I suppose the trimming is all right, that the word trimming should be use.

Q. I simply want to get at your ideas of what the specifications should be in order to secure a fascine that you would like to see.

A. As I said just now, only I would probably state in my specifications that the stuff be of a certain fineness, of certain thinness would be admissable in the fascine.

Q. If a limb stuck out at right angles and there was no provision for trimming would not the provision for choking require that they would be trimmed anyway.

A. I suppose it would.

Q. Then it would not be necessary to say anything about trimming?

A. No, I dont suppose it would, still, I suppose it would be well to put it in.

Q. How about using bundles like those back of you Mr. Geiseler, to construct an ideal mattress or an ideal fascine.

A. Well, I think as well as I can see the stuff from here now, the one lying on the top if properly choked, a fascine as made out of it, I think, that that would be very good stuff as far as I can see.

413 Q. How much would it take to choke it?

A. I might guess, I dont know as I could say very much about that, of course that is very light and requires a good deal of choking.

Q. Could that be choked into a very small space?

A. I suppose it could, yes.

Q. Would its value increase with increased choking and its usefulness increase?

A. Well, if you would take a single fascine it would be choked to such a small compass that it would hardly serve as a fascine, if you take several of them and choke them to the diameter which is called for in the specifications, 9 inches, they would be all right.

Q. You would have to have several of them?

A. No doubt.

Q. How many?

A. Two would be the least.

Q. Do you think that two like that could be compressed tightly, or choked tightly to that diameter?

A. That is what they have actually done at Cumberland Sound, they have used, as I said before, the bundles that were made, and they found on the ground they have made them into fascines, and, as a matter of fact, they would take up two bundles.

Q. Were you there?

A. No, that was stated by Mr. Hall.

Cross-Examination.

Questions by Mr. Charlton:

Q. Just a question or two, Mr. Geisler. Suppose the expression "well trimmed" is a term of art and comprehends the lopping off of large branches and placing them inside a fascine, would it be the part of wisdom to leave that out of the specification? If the expression "well trimmed" really means properly trimmed under the exigency of the work, the lopping off of the large branches, such as you have described and leaving on the smaller twigs or branches so as to
414 get them as suggested, essentially parallel in the fascine, would it be a wise thing to leave that out, if it had a well defined meaning?

A. No, I don't think it would. As I replied just now, I don't think it would be a good policy to leave that out any way.

Q. Of course, Mr. Geiseler, when you look at that brush there, which you think would take up two bundles, that does not present the appearance it had when it was cut?

A. Undoubtedly, no.

Q. Of course, all the foliage is gone and the leaves?

A. No doubt it was thicker when green and probably denser.

Q. It would require more to compress it?

A. I don't know much about the experiment actually made at Cumberland Sound. What I said just now was that two of those bundles would go to make up the thickness of a fascine.

Q. You said you were not there?

A. No, I was not there, that is merely hearsay from Mr. Hall.

Q. Of course, "closely choked" does not mean inordinately choked?

A. I have seen bundles at Cumberland Sound which were very well choked; choked under the direct orders about that thick.

Q. From whom?

A. From Captain Gillette, I suppose.

Q. Will you describe the method of that choking?

A. I was not present; I saw the bundles after being choked.

By the Court: I would like to know if a man obtaining the specifications, for the purpose of making a bid, would in your opinion, understand that he was to do more trimming than was necessary to make a fascine of the character you have just described. Do you understand the question?

A. I understand the question about this way. Whether the specifications would be clear to that effect on the idea that he was just to do that trimming necessary to produce a 415 fascine I tried to describe describe short while ago?

Q. Yes.

A. I think so, yes.

Q. You dont think it would leave him to infer he must do too much trimming?

A. I dont think it is as clear as it should be.

Q. You have been an engineer officer for a long time? Have you ever known men to visit the office for information as to what would be required of them provided they got the contract?

A. Oh, yes.

Q. Do you remember any inquiries having been made upon that precise point about trimming?

A. No, I do not remember that, still they may have been made without my knowing it.

Q. Who usually responded to these inquiries?

A. That was generally Captain Carter himself.

Q. Have you ever had a conversation with Captain Carter as to the requirements of the specifications?

A. In regard to this particular point?

Q. Yes.

A. No, I have never.

By the J. A.: Was it not in reply to an inquiry by Captain Gillette as to how the business could be conducted in the manner it had been without his discovery that he made the response that he was not a detective?

By the President: The court will adopt the question and the witness will answer it.

A. Yes, I think it was.

By the court: Refresh your memory, if you can Mr. Geiseler, and see when you made use of that expression if it was not in response to this, when Captain Gillette told you when you went down to Fernandina to see the possible cred-
416 itors of the contractors and find out whether they owed them money?

A. You are entirely mistaken, Captain Gillette has never told me anything of the kind; as I stated before, Captain Gillette has written me a note which contained such a request.

By the court: This request was made in writing?

A. Yes, in a short pencil note.

By the court: And you answered it?

A. I answered it.

Here the court took up the reading of the testimony of Witness A. S. Cooper to him, which occupied the time of the Court until the hour of adjournment, to-wit: 3 o'clock P. M.

Here the Court at 3 o'clock P. M. adjourned to meet Monday morning, January 24, at 11 o'clock A. M.

THOMAS F. BARR,
Col. & Asst. Judge Adv. Genl.
Judge Advocate.

417 United States Court Room,
Savannah, Ga., January 24th, 1898.

The Court met pursuant to its adjournment of the 22nd inst. at 11.00 o'clock a. m.

Present:

All the members of the Court and the Judge-Advocate.
The accused, his Counsel, and the Reporter, W. O. Tarver, were also present.

The President: The Court will come to order.

ARTHUR S. COOPER, a witness for the prosecution, recalled.

Judge-Advocate: Mr. Cooper, I will continue the reading of your testimony right where the Reporter left off Saturday.

Witness: (After hearing his testimony read) I have a number of corrections I wish to make. Is it in order to make them now?

Judge-Advocate: Make such statements to the Court as you desire, remembering that each time you come before the Court you are still under oath as a witness, of course.

Witness: Yes, sir. In the questions asked me by Mr. Charlton, I was made to appear as being opposed to the opinion expressed by the Board of Engineers appointed to report on the Cumberland Sound work, and, as he stated also, by the Chief of Engineers. I told him my opinion was opposed to anybody; I didn't say opposed to the Board. As I understand it, the Board did not recommend that large brush mats be placed on the outside slope of the Ocean bar, consequently, my opinion was not opposed to that of the Board.

Q. (By the Court) Are you replying to the cross-examination of the first day?

A. Yes, sir. Then in answering one question in regard to the placing of brush on log mats in the contract of 1884, I made one statement which is not absolutely correct. I said
418 that the brush was placed on the log mats loose. That was not the truth. They were placed on the log mats in bundles,—just cimply bundled brush, and placed there about eight inches thick. Then in the next contract, that of 1886, that was made optional with the Engineer to put on either bundles or loose brush. That was simply a mistake of memory on my part. Then in answer to a question from Mr. Charlton, he incorporated one statement, or fact which is not really a fact, and I answered in the affirmative, not noticing his error. He stated that loose brush and bundled brush was placed in pile dams. That is not so. No loose brush was ever placed in pile dams under my charge. It was all bundled brush. And in answer to a question from Maj. Stanton, in regard to whether any large mats were placed in the work in the contract of 1896, I said no, forgetting that Dam. No. 31 had been constructed under that same contract. Dam No. 31 has large mats in it. Dam No. 31 is a dame extending from the old Quarantine Station to Turtle Island. It was constructed under the contract of 1896, and, in answering Maj. Stanton, I had forgotten that fact. In that dam, there are some mats as high as seven courses and I wish to make that correction. I said that the last stone put on the Breakwater was in September. That is an error. The last stone put on was in October. And then in Mr. Charlton's cross-examination, he tried to make me appear as being the person who originated the statement "Bundles of Brush." I

have with me some letters which show that it was customary to use "brush",— "Brush" and "fascines". Sometimes these bundles were called "fascines" and sometimes they were called "brush"; and, if it is in order, I can introduce two letters here which will show that they were called "bundles of brush".

The Court: No. What answer will you make to that question now?

A. None at all. I think my statement was correct, only I have the letters to show that.

The Court: No; it is too late now.

419 Witness: In answer to another one of Maj. Stantons questions, I omitted one very important point. He asked me what I was consulted about by Capt. Carter, and I told him in regard to construction work and matters of that kind. I was also consulted as to the efficiency of all his men. Of course, this is very important to the Officer in Charge, as he wants to know exactly what is going on. I was required to tell him exactly what took place in the field, and I was required to give my opinion of each of the men. That was a private matter between Capt. Carter and myself, but I was required to do that. I made one misstatement in regard to my position at Leavenworth. The statement that I was an enlisted men, but the members of the Court understood that I suppose. Of course, I was an enlisted man, but I wasn't a soldier. I had the privilege of retiring at any time, and had no military duty, but I think that was understood by the Court. That is all with the exception of some explanation in regard to the personal letter I wrote Capt. Gillette.

The Court: That letter has been barred. Do you wish to correct the answer you made?

Witness: Yes, sir; one misstatement.

The Court: You can correct that.

Witness: I stated that I had made statements before the Board in regard to the assisting of Capt. Carter, of "Boosting", as it was called. I did not make that statement to the Board. The question was asked me by the Board whether I ever made that statement in a private letter, and I answered that I did.

The Court: What is your answer now?

Witness: That was the answer I made to the Board when they asked me if I had ever made that statement. It was not made to the Board, but in a private letter. That was a mis-statement.

The Court: With those corrections, your testimony is correct?

Witness: I believe it is; yes, sir.

Q. (By Judge-Advocate with permission of the Court)
420 Is that all the corrections you have to make?

A. In regard to that personal letter; that was barred out. I could not correct that. That is all.

Judge-Advocate: I submit now that the proper basis is before the Court on which to admit the letter which was ruled out the other day. It appears that this subject was brought in in cross-examining this witness in explanation of a letter, and a meaning was placed upon that letter which it did not bear before the Board, and that is a proper basis on which to admit in evidence its full statements,—the statements actually used by him; not an inference drawn upon it. I submit that it should go before the Court, and become a part of the record.

The Court: The Court understood that the statement made before the Board was an oral statement, and not a written statement in a letter.

Judge-Advocate: He has now stated that he did refer to a personal letter; that he referred to a personal letter written to Captain Gillette. The Court might ask him why he was writing a personal letter to his official superior.

Mr. Charlton: The situation is this: irrespective of where that expression occurred originally, he appears from this testimony, to have been asked if he had ever used such an expression, and not the contents of a letter; that was not inquired into before, as his explanation of that term wasn't entered into. Now, under what conceivable rule could the entire letter, filled perhaps with irrelevant matter, be introduced when the entire question addressed to the witness is in regard to one expression of it.

The Court: The statement was in writing?

Mr. Charlton: No, sir; the statement was made orally before the Board as to his explanation of the word "boost",—what he meant by using that expression "to boost", and that alone. The balance of the letter wasn't inquired into.

421 Judge-Advocate: I think perhaps it would elucidate this very much if the testimony of the witness on that point, given during the cross-examination by Mr. Charlton, be read. In the cross-examination of Mr. Charlton, this occurred:

"Q. Have you at any time stated publicly that Captain

"Carter's appointment to London and upon the Nicaragua "Canal Commission was due to the contractors?

"By the Court: What is that question?

"Has the witness at any time stated publicly that Captain "Carter appointment to the London Legation, to the London "Embassy, and upon the Nicaraguan Canal Commission was "due to the influence of the contractors?

"A. I never made any such public assertion as that.

"Q. Have you ever stated it privately, where it could be "heard by other people?

"A. I don't think I have.

"Q. Did you never state it, upon your honor as a witness, "I am referring to whether you have ever stated it in the "hearing of other people?

"A. I think I may have stated that before the Board.

"Q. Did you never say that the contractors had boosted "Capt. Carter along?

"A. I used that expression, yes, sir.

"Q. And when asked what you meant by 'boosting', you "said they had secured for him the position of Military At- "tache to the London Embassy, and a place upon the Nica- "ragua Canal Commission.

"A. I did not say they had procured it; I said I thought "so.

"Q. Did you have nothing to base that on except your "thoughts?

"A. That's all.

"Q. In other words, that comes under the category of "the lobby item, does it not? It is about the same basis, the "same theory

"A. It is all hearsay evidence.

"Q. Hearsay? Well, who told you that?

422 "A. I don't know exactly; you can hear those things, "and you can't tell where you get them from.

"Q. Mr. Cooper, as a matter of fact, you told it to your- "self; you are the only person that ever mentioned it; that "is, you didn't get it from anybody else, did you?

"A. I think I heard it.

"Q. You can't tell the person from whom you got it ?

"A. I cannot."

And then he goes on. I think that is all of the testimony on that point.

Mr. Blair: On page 32, Colonel, you will find some more.

Judge-Advocate: Then, upon the Re-direct examination by the Judge-Advocate, this occurred: (reading)

"Q. You testified, Mr. Cooper, in regard to a statement "made by you before the Board. what Board did you refer "to?

"A. The Board of Engineer Officers sent down here to "investigate the charges made against Capt. Carter.

"Q. In regard to 'boosting' along the accused?

"A. Yes, sir.

"Q. On what did you base that?

"A. Simply matters that I had heard.

"Q. You used the same expression elsewhere?

"A. Not that I know of; I don't know that I ever used "that expression before, except to Captain Gillette.

"Q. Was that in a letter, or did you state it to him?

"A. I think it was in a letter.

"Q. Is that the letter?

"A. Yes, sir."

And then came the objection and the arguments.

Mr. Blair: Now, if the Court please, I suggest that orderly method, in accordance with the practice of Courts Martial, is to ask the witness which particular answer he desires to correct. That has not been done as yet.

423 The Court: The Court prefers that you recall the witness.

ARTHUR S. COOPER, a witness for the prosecution, recalled to the stand, testified as follows:

The Court: Have you any questions to ask him?

Judge-Advocate: I have no questions.

Mr. Blair: As I understand the witness, he said that he wanted to correct some testimony. I said, so far as my experience goes before Courts Martial, the proper method for him to do that is to point out the specific answer he desires to correct; that he has not done.

Judge-Advocate: It is a matter for the Court to pass upon. In this connection, I ask for a reconsideration of the action of the Court the other day, and would then offer the letter in evidence.

Mr. Blair: I desire, of course, to make an argument on that proposition, but I would like to know first what to direct my argument to.

The Court: The Court will ask the question.

Q. (By the Court) You stated in your testimony, Mr. Cooper, that you made a statement before the Board investigating Capt. Carter's actions here as to influence the contractors had brought towards securing his appointment to London and upon the Nicaragua Canal Commission. You first said that you stated this before the Board orally, as I understood it. Subsequently you said that the statement was contained in a letter written to the Board, or written to Captain Gillette.

A. The correction I wish to make is: I stated in my testimony that I made that statement to the Board. I didn't make that statement to the Board. I made that statement in a letter to Capt. Gillette. I was questioned in regard to that statement before the Board, but didn't make that statement before the Board.

Q. (By the Court) You wish to say, then, that you never made a statement of that character to the Board?

A. That is my recollection of it, sir.

424 Judge-Advocate: I offer this letter now and suggest that he be asked by the Court how he came to address a personal letter to his superior officer.

Mr. Blair: We object.

The Court: I don't think that is proper.

(Judge-Advocate,—by permission of the Court. You did identify this letter, did you not?

A. Yes, sir.

The Court: (Addressing Mr. Blair, counsel for defense) Have you any objection?

Mr. Blair: We object to the letter being introduced in evidence. If the Court will hear me, I desire to speak on it.

The Court: State your specific grounds.

Mr. Blair: The witness was asked certain questions with reference to the statement that they were "boosting" the accused along, with reference to the statement that the contractors were "boosting" the accused along. He stated in substance after come fencing with the Colonel examining him, that he had made such a statement before the Board. Now, he desires to correct that statement, and say that he made it in a letter. We asked him nothing whatever about a letter. If he had answered us that he had never made the statement, that—if he had given categorical answers to our questions—he had never made the statement, that he had never made the statement privately, that he had never made

the statment to the Board of Engineer Officers, then our questions cease. If the Court please, I will read our questions: (Reading from stenographic report) "Q. Have you at any time stated publicly that Capt. Carter's appointment to London and "upon the Nicaragua Canal Commission was due to the contractors? A. I never made any such statement as that. Q. Have you ever stated it privately, where it could be heard by other people? A. I don't think I have.

"Q. Did you never state it upon your honor as a wit-
425 "ness, I am referring to whether you have ever stated it "in the hearing of other people?

"A. I think I may have stated that before the Board.

"Q. Well, did you do it? Don't you know whether you "said it or not?

"A. I can't remember everything I said before the Board.

"Q. Did you never say that the contractors had 'boosted' "Capt. Carter along?

"A. I used that expression, yes, sir.

"Q. And when asked what you meant by 'boosting', you "said they had secured for him the position of Military At-"tache to the London Embassy, and a place upon the Nica-"raguan Canal Commission.

"A. I did not say they had procured it; I said I thought "so.

"Q. Did you have nothing to base that on except your "thoughts?

"A. That's all."

In those questions, the Court will observe that we have made no reference whatever to any letter, and, on the re-cross-examinaton, no where was any reference made to any letter. Had the witness stated, instead of giving the answer he did, I might have; if he had stated it, No; it was in a letter, then the inference is that our questions would have ceased, or, if he had given categorical answers to the questions, they would have been in each instance,—No. Now, the letter was brought out by the Judge-Advocate on the re-direct, and I submit that it is not proper for the Judge-Advcoate, being the adversary, to bring out the question about the letter, and say, Because I brought it out, your adversary, this letter is admissible in evidence. The Court will observe that we studiously avoided, having in mind this very letter, of which we have a copy, any reference to this letter, and avoided any reference to any writing, and, had the witness followed out his duty as a witness, and made categorical answers to our questions, the

letter never would have been mentioned, and was not
426 mentioned in our cross-examination. We submit that the Judge-Advocate cannot interrogate him again, and bring out this matter of a letter, and then introduce it, because, by inference, we had reference to a letter to which we did not refer; and now, without practically changing his testimony, in an attempt to explain an answer, he brings forward this letter, and the Judge-Advocate seizes upon that with the idea, basing it upon the explanation of this witness, that he may introduce it in evidence. We submit that it is not proper.

Judge-Advocate: The simple proposition to submit to the Court is this: that the witness was examined before the Board of Engineers as to the meaning of a phrase used by him in a letter under consideration, and that that matter has been brought into this case by the defense, and that the witness himself is entitled, in view of the line of examination pursued, to have the letter read to the Court, and spread upon the record.

The Court: The Court will retire for consulation.

(The Court retires at 12.36 o'clock p. m., to an adjoining room for consultation, after which, at 12.53 o'clock p. m., all the members of the Court returning, the President, in the presence of the accused, his counsel, the Judge-Advocate and the Reporter, announced as follows:)

The objection is not sustained, and the letter will be received in evidence.

Judge-Advocate: I will read to the Court the letter, marked "Personal": (reading)

"Tybee Island, Ga., Aug. 7, 1897.

"Capt. Cassius E. Gillette,

"Corps of Eng'rs, U. S. A., Savannah, Ga.

"Dear Sir:

"Before answering your letter of yesterday officially, I de-
"sire to make a personal request of you, hence this personal
"letter. This letter I speak of shows me that you intend to go
"back of the time you assumed charge of this district,
427 "presumable for the purpose of making an official report
"on the matter. Before you take this serious step, I wish
"you to know what the consequence will be. Capt. Carter is,
"as you probably know, an extremely bright, and even bril-
"liant, man; and is therefore a credit to his Country and also
"to the Engineer Corps. He has done a great deal of cred-
"itable work in this district. He is also a very ambitious man,
"and it is this ambition which I now fear has brought him

"into trouble. He has yielded to temptation, and probably "allowed the contractor (or a particular contractor) to do as "he likes in exchange for their influence and power to boost "him along. If you pursue this investigation, you are now "making, to the end, it will undoubtedly cost Capt. Carter his "commission, and be a stain on the engineer corps of which "you are a member. I therefore beseech you to drop the mat- "ter, that is, only so far as the past is concerned. The only "real wrong done, so far as the Government is concerned, has "been to pay the contractor about 1/3 to 1/2 more for the work "than he rightly deserved. The results have been gained just "as well as though everything was done exactly according to "specifications. The mischief is not serious. Besides, what is "there to be gained by this investigation. I have already "pointed out what the loss will be. As far as I am personally "concerned, I have nothing to fear. I have done nothing that "I would blush to see published in the newspapers. It is very "galling to me, however, to have to give evidence against Capt. "Carter. I at first thought of resigning, but then I would be "assuming Capt. Carter's faults, and perhaps lose my own "standing as an engineer. While that would be a very mag- "nanimous conduct on my part to let Capt. Carter carry off "all the honors, after doing the bulk of the work myself, and "assume all of the blame to shield him, I am not going to do "so. My standing has cost me about 20 years of hard work, "and I do not intend to relinquish it so easily.

"I sincerely hope, however, that you will take the same view "of this matter that I do.

"Yours respectfully,

"A. S. COOPER.

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"P.S.—I would suggest that I be permitted to reply to "your letter with the statement that all of the July mats were "sunk before receiving your orders."

"A. S. C."

I ask now that the official letter of Capt. Gillette, as successor of Capt. Carter, to which this was a reply, or rather a response, be admitted in evidence. I withdrew the tender of the letter the other day upon objection of Counsel, but I presum they will have no objection to making consecutive history.

Mr. Blair: We have no objection.

Judge-Advocate: I read from my copy, with consent of Counsel, who interpose no objection to the introduction of it as evidence. (reading)

"U. S. Engineer Office,
"Savannah, Ga., August 6, 1897

"Mr. A. S. Cooper,
"Assistant Engineer, Tybee Island, Ga.

"Sir:

Mr. Daniels' report of mats for July for Tybee break-"water, are returned herewith. You will please have him "endorse on the reports whether or not the mats were built "according to the printed specifications, and if not so built, "why not, and an estimate showing what proportion the "material used in each mat bears to the amount that would "have been used had the mats been built according to speci-"fications.

"Very respectfully,
"CASSIUS E. GILLETTE,
"*Captain of Engineers.*"

Mr. Blair: I presume now that we have the undoubted right to cross-examine this witness upon this letter.

The Court: Certainly.

Cross-Examination by Mr. Blair.

Q. What portion of your letter of August 7th is an
429 answer to the letter of August 7th written by Capt. Gillette to you?

A. I should say all of it.

Q. To what portion of the letter of Capt. Gillette to you is this paragraph an answer: "Capt. Carter is, as you "probably know, an extremely bright and even brilliant man, "and is therefore a credit to his Country and also to the en-"gineer corps." What portion of the letter from Capt. Gillette to you is that an answer to?

A. That is not an answer; that is an argument.

Q. Then it is not in answer to anything contained in the letter of Capt. Gillette to you?

A. That letter—

Q. Answer yes or no?

A. I don't think it can be answered by "yes" or "no." "Yes" or "No" would not express the proper answer to that question.

Q. Very well. To what portion of Capt. Gillette's letter to you, is this paragraph in your letter to him an answer: "He "has yielded to temptation and probably allowed the con-

"tractor (or a particular contractor) to do as he likes in "exchange for their influence and power to boost him along?"

A. That letter was written because I did not want—

Q. Can you answer my question Yes or No?

A. I cannot.

Q. Can you point out any particular paragraph in Capt. Gillette's letter to which the paragraph I have read is an answer?

A. I cannot.

Q. "If you pursue this investigation you are now making to the end, it will undoubtedly cost Capt. Carter his commission, and be a stain on the engineer corps of which you are a member." Can you point out in the letter of Capt. Gillette to you any interrogatory to which that is an answer?

A. That is not an answer; it is an argument.

Q. Then it is not an answer to any particular inter-
430 rogatory of Capt. Gillette's letter to you, is it?

A. It is not.

Q. "The only real wrong done, so far as the Government is concerned, has been to pay the contractor about 1/3 or 1/2 more for the work than he rightly deserved." To what particular question in Capt. Gillette's letter to you is that an answer?

A. As I said before, that is an argument to try to get Capt. Gillette to withdraw his letter. It is not an answer; it is argument.

Q. A voluntary statement on your part?

A. It is.

Q. "I at first thought of resigning, but then I would be assuming Capt. Carter's faults, and perhaps lose my own standing as an engineer." Do you mean by "assuming" that you would take the burden of Capt. Carter's faults? Is that your meaning?

A. If I resigned, I would probably be looked upon in the light of doing wrong work myself,—knowingly doing work wrong.

Q. "While that would be very magnanimous conduct on my part to let Capt. Carter carry off all of the honors, after doing the bulk of the work myself, and assume all of the blame to shield him, I am not going to do so." When did you first begin to do the bulk of the work on this improvement?

A. By "bulk of the work," I meant the execution of the contracts. I had no reference to any other work at all.

Q. You had no reference to the project?
A. Not at all.
Q. You took to yourself no credit for the engineering skill displayed in the conception of this project?
A. I had nothing to do with that.
Q. And the credit which you did take to yourself of this successful construction, is based largely upon these mats which you have attacked in your testimony?
A. It is not.
Q. What is it based upon then?
431 A. Upon the fact that I was in charge of the work from the time it began. I was on the work at least twelve hours a day for at least three years. I didn't execute that work at long range from some comfortable desk in some comfortable office.
Q. And you put in these defective bundles of brush?
A. I put in such material as was presented to me to put in. I had no power, nor influence, to get anything else. I had to accept what was given to me to work with, and I did so.
Q. And that was creditable to you, was it?
A. The fact that I succeeded in getting the work done with inferior material,—accomplished the results intended to be accomplished,—I should say was creditable to me.
Q. And the method of putting in this inferior material, was that creditable to you?
A. Just as I said before, if a man can take inferior material and accomplish the same results that could be accomplished with good material, that shows ability.
Q. And you claim a high order of that kind of ability?
A. I simply put my whole life and energy into that work, and accomplished what was intended to be accomplished.
Q. You laid this inferior material along the lines of jetty selected by you, of course?
A. I did not; I had nothing to do with the plan. I simply executed the plan.
Q. And you had nothing to do with the sinking of the mats, did you?
A. Yes, sir, I did.
Q. What did you have to do with the sinking of the mats?
A. How do you mean?
Q. What did you have to do with the sinking of the mats?
A. Officially, I had nothing; practically, I had a good deal.

Q. You pointed out to the contractor where the mats were to be sunk?

A. Yes, sir.

Q. That was in accordance with the plan devised by
432 Capt. Carter,—along the lines indicated by Capt. Carter?

A. Capt. Carter indicated where the mats were to be sunk.

Q. Then it was not very creditable to you to sink the mats along the lines indicated by Capt. Carter,—in the particular places designated by Capt. Carter?

A. I claim no credit for the plan whatever, and did not so state in my letter.

Q. Did you put stone upon the mats in any different places from the places indicated by Capt. Carter's plan?

A. Most decidedly; in some instances I did.

Q. You deviated, then, from Capt. Carter's plan?

A. There was nothing in the plan to say where the rock should go.

Q. The rock was to go on the mats, wasn't it?

A. Yes, sir.

Q. The mats were to go at the places indicated by Capt Carter, weren't they?

A. They were.

Q. Then the rock was to go at the places indicated by Capt. Carter, wasn't it?

A. So it was, but the mats—

Q. Answer my questions, if you please, interrogatively, If you have any explanation to make, you make it on the redirect.

A. Very well.

Q. You didn't have anything to do with the silting up of those mats, did you?

A. Not a thing.

Q. The powers of nature did that?

A. They did.

Q. You had nothing to do with the tides or current?

A. Not at all.

Q. Wherein, then, lay your particular efficacy in this work?

A. In executing the work.

Q. In what particular?

433 A. In arranging the details of the work. When this work was going on, there were probably fifteen or twenty barges and three tug-boats, and the work was going on some-

times in as many as seventeen places at once, and it required considerable skill to keep that plant and all this work going on at the best advantage. If a certain thing at a certain point was not done at a certain time, it might go to pieces, and, to keep the work going and execute it to the best advantage, it took considerable brain work.

Q. And that is the brain work you did?

A. Yes, sir.

Q. And you didn't want Capt. Carter to have any honor for that, but you wanted it?

A. I think I was entitled to that honor.

Q. Is it not true that the only portion of this long letter dated August 7th, 1897, in answer to Capt. Gillette's letter, is like the woman's letter,—in the post-script, the post script being, "I would suggest that I be permitted to reply to your letter with the statement that all of the July mats were sunk before receiving your orders?" That is a full and complete reply, is it not, to Capt. Gillette's letter?

A. It might be a full and complete reply, but I considered it necessary to make an explanation, and I made it.

Q. Made your explanation first, and then in your post scrip two or three lines long, made your reply to the letter?

A. It might be looked on in that way.

Q. The second paragraph of this letter of yours reads this way: "This letter I speak of shows me that you intend to go back of the time you assumed charge of this district, presumably for the purpose of making an official report on the matter." What is there in Capt. Gillette's letter to you to indicate that he intended, or to indicate his intention, to go back of the time when he assumed charge of this work?

A. There is a statement in his letter that he wishes
434 me to state whether the mats sunk were according to the specifications or not. In that respect, I knew that they were not in accordance with the specifications, and I knew if I answered the question in that manner, I would be required to explain why they were not in accordance with the specifications. Furthermore, I knew that Capt. Gillette had been to Fernandina, and had seen the style of mats put in there, and that he had ordered that work stopped, and ordered it done in accordance with the specifications; that showed me that he had started an investigation.

Q. Then you knew that outside of the letter Capt. Gillette wrote to you?

A. Yes, sir.

Q. The letter from Capt. Gillette to you refers merely to the July mats?

A. Yes, sir.

Q. And Capt. Carter left here early in July?

A. Yes, sir.

Q. And the mats Capt. Gillette inspected were made after Capt. Carter left here?

A. Some of them; yes, sir.

Q. Which ones were made before Capt. Carter left here that Capt. Gillette inspected?

A. None of them.

Q. Then your answer "some of them" is not correct?

A. No; it is not. That is, none of them that he had inspected.

Q. None of the mats that Capt. Gillette inspected were made prior to the departure of Capt. Carter,—is that true?

A. To the best of my knowledge and belief it is.

Q. So then, in answer to the letter of August 6th, 1897, which calls for an explanation of the report on the July mats, you say that the letter "shows me," shows you, "that you," Capt. Gillette, "intend to go back of the time you assumed charge of this district, presumably for the purpose of making an official report on the matter;" you say that is in answer to Capt. Gillette's letter to you. You didn't have any conversation, then, with Capt. Gillette or any one else, with respect to the subject matter of your reply?

A. I never mentioned it to anybody. That is probably the second time I had ever expressed an opinion of that kind.

Q. The second time?

A. Yes, sir.

Re-direct Examination by Judge-Advocate.

Q. Did you consider the personal letter written by you, which has been identified and read to the Court, in any sense an answer to the official letter sent you by Capt. Gillette?

A. In one sense it is an answer. It is an answer in this way: it is an answer to him privately, to try to get him to withdraw his letter.

Q. Does it answer his letter?

A. No; it does not.

Q. Is it not rather an appeal than a reply?

A. It is.

(At this point in the proceedings, 1.15 p. m., Reporter W. O. Tarver was relieved by Reporter Geo. T. Cann.)

436 Judge-Advocate: Mr. P. E. Twiggs had expressed a desire, may it please the Court to make some corrections and explanation of his testimony from some point.

The President (To Mr. Twiggs): Do you desire the entire testimony read?

Mr. Twiggs: No, sir, Mr. President.

Judge-Advocate: I would like to ask you if your knowledge is gained from the newspaper account of the testimony, or from the testimony and if you would not rather have the evidence as it appears from the record.

Mr. Twiggs: I want it as it appears on the record.

Judge-Advocate: What particular part of your testimony?

Mr. Twiggs: In reference to a question asked by Mr. Charlton, whether Captain Carter has instructed me that the interest of the government of the United States should be looked after and the specifications should be carried out. I answered that question here, no, that he had not. That is the part I want to explain to the Court.

Judge Advocate; Would you like that part read? Do you desire that portion read?

Mr. Twiggs;—I would like that portion read so I can make the necessary explanation in regard to it.

Judge Advocate;—I would call your attention Mr. Twiggs that you are still under oath.

Mr. Twiggs;—Yes sir.

Mr. Rose;—It is on page 31.

Mr. Twiggs;—I will state to the Court that I do this to do justice to all parties concerned.

The President;—The record will be read.

Mr. Rose;—page 31, the third question from the bottom.

(Here the reporter W. O. Tarver reads from the evidence of Paul E. Twiggs, taken on January 22, 1898.)

Reporter;—"Did Captain Carter ever tell you that your first duty was to look after the interests of the United States government?—I dont think so.—I want a positive answer
437 from you upon that point I say I have no recollection of Captain Carter ever using those words to me, I dont think there was any occasion for it.—Well, word that conveyed exactly the same idea to your mind? If he did I dont remember it.—Did he not say to you that your first duty was to look after the interests of the United States

Government and, that being protected, that the contractors were not to be pressed if they conformed with their duties? No, sir.—Then I understand you to swear positively that he never used any such expression and that you have never testified that Captain Carter did tell you that? Yes, sir, I will swear to that absolutely.—Now, on September 21, 1897, or in that neighborhood, in the City of Savannah, in the presence of at least three persons, was not this question asked you, and was not this reply given by you: Q. "The instructions given you then, were they not, to do all you could while there, to see that the interests of the United States were protected, and in doing so, if you could give any assistance to the contractor in any legitimate way, to help him facilitate his work you could do so? A. Yes, sir." Is that true or not true? I dont think I made that statement.—Following immediately? Excuse me one minute, if I made that statement I misunderstood it.—Well, we will try the second question Q. "Your first duty was to look out for the United States and then afterwards, if consistent with your duty, you could give any assistance to the contractor that was proper? A. I think that is right, sir". Did you make that answer? I may have made that answer, I dont remember.—Suppose you made that answer, was it true or false? Suppose I made the answer?—Yes, if it be true that you did make these answers to these questions, were the answers true or false? In the first place I dont acknowledge making those answers, I dont remember the questions.—That is not my question to you? I am going to answer it sir, let me hear those questions again, I would like to answer straight on that, sir. (Mr. Charlton, reading) "Q. The instructions given you then were, were they not, to do all you could while there, to
438 see that the interests of the United States were protected, and in doing so, if you could give any assistance to the contractor in a legitimate way to help him facilitate his work, you could do so? A. Yes, sir." I think there was something said in regard to it, if I am not mistaken, I remember, I re-call it.—How much of it? I dont know, sir.—In regard to the assisting of the contractor I think I answered yes.—Now, you are an intelligent man, is it possible for you to misunderstand that question? No, I dont think so.—Shall I read the second one? Go ahead. (Counsel reading)—"Q. Your first duty was to look out for the United States, and then afterwards if consistent with your duty you could give any assistance to the contractor that was proper? I think

that is right, sir. I see what you are driving at, that was before the Board of Inquiry, was it not? Yes, sir? And not by Captain Carter, that question was asked me before the Board.—Yes, sir? I misunderstood it, yes, sir those questions are correct, I was under the impression that you meant that Captain Carter had given me those instructions in his office or on the work. Those questions were asked me before the board of Inquiry.—And were the answers given correct? I think I answered them in that way.—Dont you know? I think so, I dont remember exactly the wording of it.—You know these answers are not elaborately worded ones, one is yes-sir, and the other says "I think that is right sir"? If I said so, I will swear to it.—May I ask you whether you answered "Yes, sir" to the first question, and I think that is right, sir, to the second question? Who are the questions asked by?—I dont think it makes any difference who asked the question, Captain Carter asked you both of those questions? Yes, sir, I think that that was right.—I want to know whether it was right? I will answer yes, sir."

By the President: What correction do you wish to make?

Mr. Twiggs: Well, there are portions of it, I dont know, showing there, which all explains what I want. I simply wanted to state, if, in answering that question in the be-
439 ginning, that I was under the impression that Captain Carter—or what Mr. Charlton referred to, was when Captain Carter gave me certain instructions when I went down on the works in the beginning, that those instructions were coupled with the first instructions that I was given, and that is the reason I answered "No". At that time he didn't give me those instructions. I was under the impression that that was what Mr. Charlton was driving at. In other words, when he gave me instructions and gave me charge of the works his instructions were, as the testimony will show, that I was not to press the contractor, and he did not wish military fascines made. I thought that he referred to that matter. I am not correcting that, that is right, I am only stating the way it came up; I thought that was the time that was referred to, and that he had given me those other instructions at that time.

By the court: Well, that is sufficient on that point.

Mr. Twiggs: I will state that Captain Carter did give me those instructions absolutely at different times, he may have done so more than once. I am certain he did so once, he may have done so afterwards.

By the court: What were you referring to when you said "He gave you those instructions"?

Mr. Twiggs: The instructions that the interest of the United States Government must be looked after and the specifications carried out.

The President: Any other corrections?

Mr. Twiggs: That is all, Mr. President.

Cross-Examination.

Questions by Mr. Charlton.

Q. Now that you are upon the stand and stated awhile ago that you had come to do justice, is there any other correction you wish to make?

A. I dont think so, Mr. Charlton.

440 Q. Are you prepared to make a correction that the average amount you put in was as on those (indicating)?

A. I do not, I said what I thouhgt was correct there.

Q. Have you talked with any one since the testimony of yesterday?

A. What do you mean?

Q. About any feature of this case?

A. I have discussed it, I suppose just the general idea of the court and so forth, but with reference to that one question—Yes, I did discuss it.

Q. With whom?

A. Mr. Austen, he and I discussed the matter together.

Q. Anybody else?

A. I think not, I think Mr. Hall was present, possibly, when I discussed it with him.

Q. Any one else?

A. No, sir.

Q. What are you talking about now, the correction you have just made?

A. Yes, sir, that's right.

Q. Have you talked about anything else about the case?

A. I dont think I can recall anything else just at present, I may have, and may not have, I may have made casual remarks in regard to it, I dont know what, I think I was talking to them at the time you passed me on the corner Saturday afternoon.

Q. They are witnesses for the prosecution, are they not?

A. Yes, sir, I think so.

Re-direct Examination.

Questions by the Judge-Advocate:

Q. Have they been examined for the prosecution?

A. I think not, sir.

Q. I will ask one question more, with the permission of the court, how did you carry out those instructions given you by Captain Carter?

441 A. What do you mean, Colonel Barr?

Q. About looking out for the interests of the Government?

A. How did I carry them out?

Q. How did you carry them out?

A. I did not carry them out.

Q. Why not?

A. Well, sir, for two or three reasons; in the first place, I did not think that Captain Carter wanted me to do that which he was not doing himself.

PAUL J. KEATING, a witness for the prosecution, having been duly sworn, testified as follows:

Direct Examination.

Questions by Judge-Advocate.

Q. What is your full name, Mr. Keating?

A. E. J. Keating.

Q. What is your business?

A. I am a cement tester at present.

Q. Have you been in the service of the United States in the work of improvement of rivers and harbors in this Engineering District?

A. Yes, sir.

Q. When?

A. Well, altogether since about the 6th of June, 1893.

Q. How were you first employed?

A. As recorder to a survey party.

Q. That was in 1893?

A. Yes, sir.

Q. How were you employed in 1894?

A. As boatman.

Q. Throughout the year?

A. Well, not that title, I was inspector of pile driving and mat construction.

Q. You were borne on the rolls as a boatman and paid as a boatman?

442 A. I dont know about the pay, sir.

Q. So far as you knew, you were employed as a boatman?

A. That was the way I was carried on the rolls, yes, sir.

Q. Did you receive any instructions from the Engineer officer in charge at that time, Captain Carter, the accused?

A. At what time?

Q. When you were acting as inspector?

A. Yes, sir.

Q. Were those written or oral instructions?

A. Well, I received instructions from Captain Carter on many different occasions, I dont know which occasion you refer to, Colonel.

Q. Well, to whom were you ordered to report?

A. I was ordered to report at one time to Mr. Cooper by Captain Carter.

Q. Was that order in writing or given to you verbally?

A. In writing.

Q. Have you it with you?

A. Yes, sir.

Here the witness produces the order, it is offered to counsel for the accused without objection.

Q. Read that so that its date of the instruction you got may appear?

A. June 17, 1894.

Q. Is that the 17th?

A. June the 17th, yes, sir. "Mr. Keating will report to Mr. Cooper at 79 Charlton Street at 8 o'clock this Sunday evening. O. M. Carter.

Q. What work were you then placed upon, Mr. Keating?

A. I was superintending construction of mats.

Q. Where?

A. The first place that I went to was Dutch Island, that is about 4 miles from Savannah, I think it is 4 or 5 miles. It is further than that by water, probably 10 or 12 miles.

Q. Was it the place where mattresses were being con-

443 structed from bundles being brought to the place?

A. Yes, sir.

Q. Then you saw mattresses in course of construction?

A. Yes, sir.

Q. And saw them after they were built, ready to be towed away to be sunk?

A. Yes, sir.

Q. Well, state what the result of your inspection of those mattresses was as to their condition?

A. Those bundles were made up in the woods.

Q. Those bundles were found right there?

Mr. Charlton: Confine him to what he knows.

Judge-Advocate: I think he has thus far done so.

Witness continuing, says: Who sent us to observe the construction of mattresses?

Q. No, not at present. Certainly;—after the mattress was constructed and you inspected it, what kind of mattress did you find?—that is all.

A. Well, it would be a 9 course mat, constructed of poles and brush.

Q. Did you know whether it was properly constructed or not, after you had seen it?

A. According to my instructions, yes, sir.

Q. Did you have a copy of the specifications?

A. Not with me; I don't think I did, I am not positive either on that point.

Q. Had you been furnished with the specifications?

A. I had read the specifications; I had had a copy, but I am not positive that I had a copy at that time.

Q. Do you remember the mattresses and the requirements of the specifications?

A. Only in a general way, I had an idea how they compared with the specifications.

Q. Well, what were your instructions as to the mat-
444 tresses, Mr. Keating?

A. Mr. Cooper, when I went to see him, told me how he wanted the brush made into bundles and laid on grillages of poles, made into mats. He told me that he wanted the straw, pine brush, trimmed. He didn't want the straw. That is the only particular brush that he said he wanted trimmed.

Q. The pine brush?

A. The pine brush. He said the mattresses had been coming there with too much pine straw in them, and that he didn't want that. Do you wish me to go into the instructions that Mr. Cooper gave me?

Q. No, I will let that go at that. Did you examine those mattresses after they were constructed and see if they were compactly built?

A. Well, I was there during the time when the mat work was constructed. I could see them as the work progressed on the mats.

Q. Were they compactly built?

A. Well, that is a question there might be a difference of opinion upon.

Q. Look at those bundles on that platform back of you; you may go back and examine them if you like, Mr. Keating.

A. This is very much like the brush, only that it is dead, there are no leaves in it. When it was a mat it was a little better than it is now.

Q. How as to their being tied?

A. They were tied better than that.

Q. Tied closer?

A. Yes, sir.

Q. All of them?

A. All that I could inspect, that was under my directions, they were.

Q. At that time, in 1894, did you walk over any one of those mattresses, or course of mattresses after it was constructed?

A. At that time, yes, sir; yes, sir.

445 Q. Well, was that a mattress that was made before you arrived or after you arrived?

A. I think it had been finished just before I arrived. It was there finished.

Q. You did not witness its construction?

A. No, sir.

Q. Could you walk over it?

A. Well, I could walk over it.

Q. Did you walk over it?

A. Yes, sir.

Q. With what result?

A. Well, I found a hole in it.

Q. How large a hole?

A .I dont remember that now, sir. I could not state positively, but I went down into it.

Q. You did not fall into it, but you simply made your way into it?

A. I went into it. I saw it before I got into it. I didn't fall into it.

Q. How long were you at the mattress camp at that time?

A. At that time?

Q. Yes?

A. Well, I was there about 6 weeks, all together.
Q. 6 weeks?
A. About 6 weeks.
Q. Do you know how many men were engaged in bringing bundles of brush to rendezvous?
A. That would be the drivers, the teams brought the brush.
Q. How many men were engaged, that is, there that you saw, not those that you estimate?
A. Those that I saw right there at the camp, at the landing? I frequently went out into the woods to show them how I wanted those bundles constructed as per my instructions.
Q. Whom did you show how to get up the bundles?
446 A. I showed the men that had charge of the men who were constructing those.
Q. Who were the laborers who were constructing those?
A. I dont remember.
Q. Do you know how many there were?
A. Well there were—I made an estimate some time ago. In the estimate there were 83 men. It would average 83 men. But since that I have discovered I made a mistake and it was but 76 men.
Q. Have you made an estimate of the cost of manufacturing those mattresses?
A. Yes, sir.
Q. Constructed as you saw them?
A. Yes, sir.
Q. Was is your estimate as to their cost per square yard?
Mr. Blair: We object, if the court please: This man has not been shown to have the slightest qualification to give his opinion as an expert of the cost of the construction of these mats.
Judge-Advocate: I will withdraw that for the present.
Q. How would you go to work to make an estimate of the cost of construction?
A. I would learn the probable amount of labor that it took and about how much the labor was paid per day, and about what the materials cost, and the wire, and so forth.
Q. Have you possessed yourself of sufficient knowledge of the subject so that you can estimate the cost per square yard of those mattresses?
A. I think so.
Q. Well, what is your estimate?
A. About 10-1/10 cents.

Q. These mattresses to which you have been testifying, I understand, have reference to those sunk under the contract of 1892?

A. Yes, sir.

Q. Now, have you seen any mattresses under the ex-
447 isting contract, that of 1896 in the Savannah Harbor?

A. Just a few, yes, sir.

Q. Well, how many?

A. I think about 10.

Q. What was their general character?

A. They were not so good as those that were constructed under my direction in 1896.

Q. '96.

A. 1894.

Q. Well, in what way?

A. Well, they were not so compactly built. The brush was not so compactly pushed up together it was not as solid as those that were built under my charge.

Q. You were along there in an official capacity when you saw them?

A. I was assisting the inspector who had charge of the work.

Q. You were in the employment of the government at that time?

A. Oh, yes, sir.

Q. Well, what experience did you have with any of those mattresses?

A. I sunk one myself while the inspector was not there, while he was away sick. This mat did not hold together very good, there was a very big sea running at the time, however.

Q. Did you find any mattresses not properly compressed?

A. Yes, sir.

Q. How many?

A. Well, I can recall one.

Q. How was that defective?

A. It had a hole in it.

Q. A large one or a small one?

A. I went through it.

Q. Down into it?

A. I went through it to the deck of the lighter from the top to the bottom.

448 Q. Did you come out the mattress the same way you come in?

A. I dont remember that, sir, I dont know whether I did or not. I dont remember whether I came up through the mat, my impression is I crawled out on the deck of a stone barge which was very close to to the one that had the mat.

Q. That is simply a matter of memory and not a statement of fact?

A. Yes, sir, the last question.

Q. Was more than one layer of bundles of brush laid upon a grillage before another grillage was placed about that?

A. I dont remember ever having seen it.

Q. You saw it then complete with one layer of brush and a grillage then put in place, and that was uniform in the construction of those mattresses that you saw made?

A. . Yes, sir, generally more than one course of poles, more than one grillage.

Q. But one layer of brush?

A. One layer of brush, yes, sir.

Mr. Blair: May it please the court, before proceeding with the cross examination of this witness. The court has doubtless observed, as we have observed, that the engineer officer in charge now in this district has been actively assisting the Judge-Advocate in presenting the case. I wish the court to distinctly understand that I have no objection whatever to the Judge-Advocate having any assistance whatever which he may require or desire, but inasmuch as the engineer officer in charge here is not in uniform we infer that he is not officially the assistant of the Judge-Advocate: and we think the accused has the right to have it spread upon the record just in what capacity the engineer in charge is here in the court assisting the Judge-Advocate, and we respectfully ask the court that that be spread upon the record.

Judge-Advocate: I will state very frankly to the court that Captain Gillette is assisting me, not only in the court all day, but usually until a pretty late hour at night; that
449 he is assisting me in the performance of my duty, in the preparation of this case for the proper presentation and consideration of the court, and that without his assistance I should be very much at sea very often: and while we are upon this point, not only he is assisting me, but the entire force of his office is assisting me and we are all engaged, as is this court engaged, in endeavoring to ascertain what is the truth of this matter and I am very glad to have it all go upon the record and let the reviewing officer see how much and how little assistance I am having.

Mr. Blair: We of course could not make any objection to the Judge-Advocate having the assistance of the engineer in charge, but it has not, as yet, appeared in the record that he is assisted other than by Captain McClure, but it is patent to the eyes of every member of the court that Captain Gillette is here actively assisting, and in as much as he was not in uniform we assume that he was doing it in an individual capacity. I presume now it is upon the record, that is all and will be satisfactory.

Judge-Advocate: I would like this further to appear, that Captain Gillette is attending to the duties of his office, as well as assisting me, I have never given the subject a thought as to whether he should be in uniform or not.

By the President: That will appear upon the record, that is all that is necessary.

Cross-Examination.

Questions by Mr. Charlton:

Q. Mr. Keating when did you first come into the employment of the United States?

A. 1893.

Q. In the capacity of a boatman, I think you said?

A. Recorder.

Q. What are the duties of a recorder?

A. That is, to record the soundings when the leads-450 man calls them out to him in making surveys.

Q. You subsequently became a boatsman?

A. Yes, sir, that survey was ended and Captain Carter gave me a position as boatsman.

Q. In the same year?

A. In the same year.

Q. When did you first become an inspector?

A. In the same year.

Q. 1893, was that?

A. 1894, I beg your pardon, 1894.

Q. How long did you continue an inspector of mattresses? I mean, of course mattresses?

A. Oh, of mattresses?

Q. Yes.

A. Just about 6 weeks.

Q. And that is all the experience you have had?

A. In the construction of mattresses.

Q. In the construction of mattresses, 6 weeks?

A. About 6 or 7 weeks, yes, sir. It was from the 18th of June until about the 28th of July, I think.

Q. And that experience was out at the camp of construction, was not it?

A. Yes, sir, usually.

Q. You were sent there to see that the work was properly done?

A. Yes, sir.

Q. You were sent under instructions of Mr. Cooper?

A. Yes, sir.

Q. The instructions came from him and not directly to you, and not from Captain Carter?

A. Yes, sir.

Q. You went there, and to the best of your ability saw that it was properly done? Didn't you see it so well done that you, yourself, stated that the mattresses were so well built that

451 you had worked yourself out of a job?

A. I believe I did make that remark.

Q. It was true when you made it, was not it?

A. I think it was, yes, sir.

Q. Did Captain Carter ever have occasion to reprimand you for anything?

A. Yes, sir.

Q. What for?

A. Some part of the work I did that didn't suit Captain Carter's ideas.

Q. It was defective, was not it.

A. He said it hadn't been done right.

Q. Was not the contractor ordered to repair it, or do you remember that?

A. I do not, sir. Yes, sir, Captain Carter did say it would have to be repaired.

Q. Now, those mattresses that you inspected during your 6 weeks sojourn at the camp, during your entire duty as inspector were they not entirely satisfactory to Mr. Cooper?

A. I think they were, I think he told me they were satisfactory to him. I think I met him in the office one day and he told me they were coming all right now.

Q. Now, Mr. Keating, just one or two more questions; you have stated an estimate of the probable cost of those mattresses?

A. Yes, sir, but that is the estimate I desire to withdraw, this estimate I presented to the Board.

Q. Did you present it to the Board or to Captain Cassius E. Gillette, they are not the same thing?

A. Exactly.

Q. It was at Captain Gillette's request you presented it to him?

A. Yes, I think that was it, I think he asked me to submit a letter to him; yes, sir, I think that was it.

Q. You desire to withdraw it now?

452 A. Now.

Q. Well, nobody has put it in yet. Have you that estimate with you?

A. I made another estimate since then.

Q. I understand, I am talking about the original one now, have you that with you?

A. Yes, sir.

Q. Will you show it to me, please, I want to ask you just one question about it. (Here the witness hands counsel the estimate.) This is signed by you?

A. Yes, sir.

Q. I notice that in estimating about the plant which you put at $16,000 you estimate as high as 25 per cent interest?

A. Well, 10 per cent interest on the plant.

Q. And what is the balance for?

A. Sinking fund.

Q. Where did you run across the word amortization?

A. I got that word from Mr. Geiseler, it expressed what I wanted.

Q. You never heard it before?

A. No, sir, I never did.

Q. Is there anything else that you didn't get from somebody else?

A. Yes, sir.

Q. What else is there?

A. That I didn't get from somebody else?

Q. Didn't you get it all from somebody else?

A. Well, if you put it in that way. Of course, the cost of labor of course I had to get that from somebody else.

Q. You had no experience in that?

A. No, sir.

Q. You had no more experience with the cost of labor than you had with amortization?

A. I heard the men say what they were getting, I have seen them hire them and tell them how much they were

453 going to get a day. If that is hearsay evidence.

Q. You had never heard the word amortization until Mr. Geiseler suggested it to you?

A. Yes, sir.

Q. Your idea now is that it meant a sinking fund?

A. Yes, sir, that is what I did, that is what I thought the word meant, a sinking fund, yes.

Q. I was only concerned about it because I was very much in a condition that you are, I had never heard it until I look it up and found that it meant the alienation of lands or tenements in mortmain, a term of scotch law which has nothing to do with mattresses at all.

A. I don't care, that expresses my meaning.

Q. When you feel through the mattress down here—

A. I didn't fall through.

Q. Didn't you? You went down upon the barge, did you purposely go through it and then crawl out at the side?

A. I think so.

Q. Did you report that mattress?

A. No, sir.

Q. Now the mattress you say that almost went to pieces, the one I think when a heavy sea was on, did that mattress get away or was it grappled back?

A. I don't remember that it was.

Q. Can you recall the fact that it did get away? And that you did rescue it finally?

A. No, sir.

Q. You don't recall that? Now, in 1894, when you went down in the mat, who was present?

A. There were two or three present, Mr. Gaynor was present.

Q. Which Gaynor?

A. Ed. Gaynor.

Q. Who else?

454 A. That is all that I remember that was right there with me, if I am not mistaken, Mr. Gaynor went down in the mat with me, I may be mistaken.

Q. Anybody else that you recollect? I want to get at the person who saw you go down in the mat.

A. I think that his foreman also saw me, Tom Gaynor. That is all I know; I think Tom Gaynor, I am not positive as to Tom Gaynor even.

Q. Were you permitted to show any favors to the contractors, Mr. Keating?

A. No, sir.
Q. Nor did you?
A. Nor did I.

Re-direct Examination.

Questions by the Judge-Advocate.

Q. Before being asked to prepare that estimate, which counsel has shown you, Mr. Keating, how did Captain Gillette come to know that you had experience as an inspector?

A. I remember now. I went to Captain Gillette and told him I had made a mistake inasmuch as I had stated to the Board that it was in 1893 that I was at the brush camp, no, in 1894—I was really in the brush camp in 1894. Then Captain Gillette asked me if I had any records by which I could make an estimate of the cost of mats.

Q. Then you yourself went to him. He didn't come to you?

A. No, sir. I didn't go to him for that purpose, understand.

Q. But you brought to his knowledge the fact that you had been an inspector at a mattress camp?

A. Yes, sir, of course, that was brought to his knowledge the day before when I was before the Board.

Q. Did he suggest to you that you could receive any assistance in making this estimate?

A. Yes, sir. He told me; in fact he went with me to Mr. Geiseler and he told me that Mr. Geiseler would help me,
455 to give Mr. Geiseler the data, or tell Mr. Geiseler that I would submit a letter to him; that he wanted Mr. Geiseler to help me—I dont remember the words.

Q. That he could aid you in what way, can you conceive?

A. I understood that it was in shaping the estimate.

Q. As to the manner of making the estimate.

A. As to its shape, its general form.

Q. As to what should enter into the consideration in determining the cost?

A. No, sir.

Q. That, you yourself knew?

A. Yes, sir. Those I thought I knew.

Q. You knew the amount of labor and the amount of material required to construct one?

A. I thought so, yes, sir.

Q. In the 6 weeks experience you had manufacturing an article of that kind, you could make some estimate?

A. Yes, sir.

Q. You know of the number of men employed on them?

A. Yes, sir.

Q. Did anybody in the government service, that you are aware of, here in this district know any more about the subject than you did?

A. I don't know.

Q. As to the number of men employed about the mattress camp?

A. I really don't know.

Q. Do you know of any other inspector than yourself being on duty in that camp?

A. Not in that camp, I don't think there had been any other inspector in that camp.

Q. Or any other camp in this district?

A. At that time, no sir.

Q. Or since that time; I mean while Captain Carter was in charge of this engineering district?

A. I don't know of any one.

456 Q. In your estimate, which the counsel showed you on the cross-examination, you allowed a certain percentage; did you allow in that estimate anything for wear and tear or loss on the value of the plant used?

A. Yes, sir.

Q. In what item was that allowed?

A. That was allowed under the head of repair.

Q. Read it please in response to my question.

A. Read the whole?

Q. Read in response to my question.

A. I would like to have you repeat. (Here the question is repeated). Wear and tear on the plant?

Q. Yes.

A. That is what I understand by amortization, in other words, I mean by that that I allowed 10 per cent to replace that plant.

Q. And that is the item to which you referred?

A. Yes, sir.

Q. I understood you to say that you estimated there for the labor a greater number of laborers than you found subsequently were actually employed?

A. Yes, sir.

Q. What did you allow a day for the labor of those men in your calculation?

A. 80 cents.

Q. What was your basis for making that the pay they received?

A. What the men told me.

Q. No matter what they told you. Not upon what they told you, simply, but from what you knew from seeing them paid, or knowing what contract they made, you based it, you based what they were paid?

A. Yes, sir.

Q. What changes did you make in the estimate submitted to you by counsel, or the basis of the estimate, and that subsequently made by you?

457

A. The mat I based that estimate on was built under very favorable circumstances and it was rushed through, they had a good many men, and it was rushed through in a hurry.

Q. You made the estimate in a hurry, or the mattress was made in a hurry?

A. No, the mattress was made in a hurry, it was built in about 2 days.

Q. Well, what change did you make in the subsequent estimate?

A. I found instead of 8 1/10 it is about 10 1/10 for a 9 course mat.

Q. That is a more carefully considered estimate by you than the first one?

A. Yes, sir.

Q. And that was 10 1/10 cents?

A. Yes, sir.

Q. And to which you had given more time?

A. Yes, sir.

Q. In securing the assistance of Mr. Geiseler, did you obtain from him information as to the amounts estimated, or simply aid in making up the estimate?

A. That is all.

Q. The estimate then was based entirely upon information furnished by you?

A. Yes, sir.

Q. You simply took advantage of Mr. Geiseler's knowledge?

A. That would be about it, I expect, it would not be so pretty to look at, probably if I fixed it up myself.

By the President: Has the court any question. There are none.

458 JULIUS H. GRUNDEL, a witness called for the prosecution, having been duly sworn, testified as follows:

Direct Examination.

Questions by the Judge-Advocate.

Q. What is your full name?

A. Julius H. Grundel.

Q. How are you employed, Mr. Grundel?

A. As draughtsman.

Q. Where?

A. U. S. Engineer's office.

Q. In Savannah, here?

A. Yes, sir.

Q. At present under Captain Gillette?

A. Yes, sir.

Q. What is that map or chart? (Handing witness map).

A. North Jetty, Cumberland Sound.

Q. Please state to the court what. Give to the court a description of it.

A. A compilation of official records of mattresses, stone, cross sections and profiles Cumberland Sound, Georgia and Florida, North Jetty.

Q. That is a general description of it?

A. Yes, sir.

Q. What does it show?

A. Longitudinal sections and also cross sections at different intervals.

Q. What information does it convey?

A. It conveys the longitudinal section, which is taken on the axis of the jetty, and a cross section, which is taken at different points along the jetty.

Q. Describe what those lines mean?

A. The upper dotted red line represents the height of mattresses before sinking, the full red line represnts a
459 line showing the present average crest for the width, called the original width of top.

Q. And that black line?

A. The black line. The bottom line shows the original bottom at the time of sinking the mattress. The dotted black

line above that shows the height of the mattress after sinking. The full blue line shows the bottom of the mattress at the time of sinking, and the dotted blue line shows the top after sinking.

Q. And the upper blue line?

A. The upper dotted blue line shows the top of the mattress.

Q. After sinking?

A. Yes, sir.

Q. Does that show the number of mattresses sunk at any point in the improvement?

A. Yes, sir, it is all given in the table of description, each mat, the size of each mat, the number of courses are all made explicit on this mat so anybody could follow it.

Q. From what survey was this chart made up?

A. This was made up from a survey which I think dates back of 1882, that is, part of it, and it has the last work 1896 and 1897.

Q. What do those figures 19,000 mean at the top of the chart?

A. That represents the distance from an actual point on the jetty and to that particular point on the axis of the jetty measured along the jetty.

Q. That is then, it is a station?

A. Yes, sir.

Q. What does this line mean there?

A. That full black line on the cross section is taken from the Geisler survey made in October or November, 1897. It is an actual cross section, as ascertained and crossing the jetty at that particular point, and it is named here in the profile as "Station 18,940."

Q. That shows everything which was in existence on that date?

A. Yes, sir.

460 Q. What is that chart or map (Handing witness a map)?

A. That is a chart or profile of South Jetty, compilation of official record mattresses, stone and cross section of Cumberland Sound, Georgia and Florida.

Q. Was that draughted by you, Mr. Grundel?

A. Yes, sir, complied by me from the records in the office

Q. Based upon the official records?

A. Yes, sir, the official records, and what is stated in the profile there, or title.

Q. To the best of your knowledge and complete?
A. Yes, sir, that is made strictly according to the figures, I can produce anything I have there at any time.
Q. These two together show existing conditions?
A. Yes, sir.
Judge-Advocate: Or existing conditions at the date of the last survey. I offer these in evidence to be used in reference from time to time as the case will progress. These will go on record, marked "Exhibits 11 and 12."
Q. What is this Mr. Grundel?
A. That is a detached extension of Oyster bed training wall, Savannah Harbor.
Q. And what is this? (Handing witness paper).
A. Cockspur Island training wall and Oyster Bed training wall.
Q. That also made up from the actual records of the office?
A. Yes, sir.
Q. And made by you?
A. Yes, sir.
Q. And are accurate to the best of your ability?
A. Yes, sir.
Judge-Advocate: This is offered in evidence, and to accompany the records and proceedings, marked "Exhibit 13."

461 *Cross-Examination.*

Questions by Mr. Blair.
Q. Mr. Grundel, when were the two charts first identified by you, completed?
A. Completed this morning, I added a few figures on there, simply placing the height of the stone on top and the original height of the mattresses.
Q. These are the two charts relating to Cumberland Sound, are they?
A. Yes, sir.
Q. What stage of completion had they reached on the 13th day of January, the day after this court opened?
A. Well, there was considerable to it, I could keep on working on that, for that matter, now.
Q. Considerable to be put on at that time, consisting of what, roughly speaking?
A. I had to add the stone to each mattress.
Q. Did it consist only in the lettering?

A. No, sir.

Q. Didn't you state in the office of the engineer in charge on Thursday, the 13th day of January, current, that these charts were finished; about 10.30 in the morning, in the presence of Captain McClure, that these charts were finished, all except the lettering, which would take a day, or perhaps two days?

A. It would depend how far this work is supposed to reach. That profile starts in 1882, I was told afterwards by Captain Gillette all he cared for was the latter part of it, I didn't understand him.

Q. Did you make that statement?

A. Yes, sir.

Q. That morning?

A. Yes, sir.

Q. You spoke just now of these two charts being longitudinal sections and cross sections of jetties at Cumberland Sound.

462 A. Yes, sir.

Q. That is your description of it?

A. Yes, sir.

Q. Do these charts show the interior construction of the jetties?

A. Interior as much as you can show it. It shows the dimensions.

Q. Does it show anything at all of the interior construction.

A. It shows a plane passed through: What has been placed there.

Q. Does it show anything at all of the materials in the interior?

A. No, sir.

Q. You platted that chart from the soundings only?

A. No, sir; well, it is constructed by the soundings principally.

Q. What else?

A. And lines.

Q. The data which go to make up these charts were principally soundings?

A. Soundings taken and general work taken from the engineer officer in charge.

Q. Were there any borings made into the interior of the jetties?

A. No, sir.

Q. And placed upon that chart?

A. No, sir.

Q. Then, strictly speaking, that chart is not a longitudinal section?

A. Yes, sir, it could be so.

Q. Wait until I finish my question; but it is, strictly speaking, a longitudinal profile with areas of cross profile?

A. A longitudinal profile, yes, sir; and cross section.

Q. They are cross profiles, are they not, and not cross sections?

A. They would be considered cross sections, as I understand them.

Q. Do they show the interior construction in any way of those jetties?

A. No, sir, but you have to assume what the interior was. We know what was placed there.

463 Q. Do they pretend to show with any degree of accuracy the actual interior structure of those jetties?

A. We didn't investigate and go down there. It is assumed by all engineers you would find mattresses there if they were placed there, and rock and whatever was placed there.

Q. Do the charts pretend to show the interior construction of those jetties at which, at the places at which, the so-called cross sections were taken?

A. Yes, sir, from an engineer's standpoint; as Captain Carter would have it shown, I think he would call that a cross section of the jetty, he has done the same work in the office.

Q. I am asking you from the standpoint of plain simple truth.

A. I didn't go into the interior. I know what was placed there from the notes.

Q. I want to know if your understanding of the meaning of cross section, as an engineering term, is an imaginary section taken from consideration simply of the exterior of the structure said to be in the cross section?

A. Yes, sir, that would be a plane passing down from the top, the principle of which is represented by soundings, down to the original bottom, and what is there we expect is there, brush or stone, it didn't grow there, and evidently you can consider it there. Brush or stone, either one thing or the other.

Q. If, for any particular reason, it was desired by an engineer to get at it as a matter of truth, the actual in-

terior of the cross sections in those jetties, and in order to do so borings were made with a diamond drill or anything else, would that show the interior structure, and from the observations thus made a picture or drawing was prepared showing the actual interior, what would you call that in engineering?

A. All that depends to what extent you want to go into that work. We know what was placed there, there is brush there and there is rock there, you can assume which is brush and which is rock.

464 Q. I want to know from an engineering standpoint.

A. I am not here to discuss engineering standpoint.

Q. You are here to answer such questions as the court permits me to ask you.

Judge-Advocate: You must answer the question to the best of your ability.

The President: The witness will answer the question.

Q. I ask you if by means of a diamond drill, or a diver going down there and making an actual cutting across one of those jetties, and actually ascertaining exactly what was in the interior of the jetty along the plane, and that cut of it was actually platted upon a map what would you call that, a cross section?

A. I would call it a cross section, and I could tell when I struck rock and when I struck brush.

Q. In any event then, would you call this thing, which you have platted upon these charts, supposed to be the depths at points determined by a plane at right angles and not an actual determination of the interior structure by any stretch of imagination could that be called a cross profile? in engineering?

A. A profile I would consider the outer surface, the section is what you call the profile, from what we found by taking soundings and observation down to the original bottom, showing what was placed there.

Q. Mr. Grundel, how do you ascertain, in order to correctly plat, the mean height of the crest of those jetties at any cross section or profile.

A. You could take the several heights?

Q. What several heights?

A. The soundings.

Q. Where?

A. Taken across the jetties.

Q. At how many points?

A. The points that are on the jetties, those that hap-
465 pen to fall on the jetty itself.

Q. Now, I am asking you as an actual matter of fact how these charts were constructed, the cross-section, so called. We will presume that to be a portion of the jetty, that book standing on the edge, we will assume this table upon which the edge of the book rests to be the bottom of the sea, how many soundings were taken in order to determine the average height of the top of that jetty, on the crest of that jetty above the bottom?

A. Well, I didn't count the number, I suppose you can look at that chart there and find out the number that was taken.

Q. How far on either side of the medial line did those soundings run in the plane of that cross section?

A. They ran, I suppose, a couple of hundred feet, in some cases 300 feet.

Q. That would make the total in the determination of the average mean height of this jetty?

A. No, sir, I did not consider those in the section at all, the section mentioned there, the average section is simply taking the soundings that happen to come on the jetty itself.

Q. On what parts of the jetty?

A. Well, the average height would be taken on the original width of the crest or top of the jetty.

Q. Then your answer is that your soundings taken to ascertain the average mean height were taken 200 feet apart on a medial line was not correct?

A. No, sir, that was not correct.

Q. How far on either side of the medial line were the soundings taken to determine the average mean height of that cross section, how far on either side of the medial line of that crest of that jetty?

A. Well, we taken the average of the original width of the top of the last mattress laid, if it was 80 feet wide we took the average of 80 feet.

466 Q. That is 40 feet on either side of the medial line?

A. That is by the section taken by Mr. Geiseler, the cross section. The average was taken of the original width of this section here of the top mattress. That is, the soundings were taken, or the average height taken for that width, which in this case is 75 feet.

Q. Then in computing that average height you did not

take a sounding for more than 37½ feet from the medial line, did you?

A. No, sir.

Q. No, such soundings entered into your computation here?

A. Not in here.

Q. And all along this cross section?

A. No, sir.

Q. No such cross section enters into the composition of this supposed line? of the jetty, does it of the cross section?

A. No, sir.

Q. Not at all.

A. No, sir.

Q. What is this space to represent (indicating)?

A. That is the cross section taken by Mr. Geiseler.

Q. How do you know this height here, which is more than 50 feet from the middle perpendicular?

A. That sounding there is platted from a sounding taken by Mr. Geiseler, that is the crossing of the jetty he platted as a whole line as far as it extended.

Q. Then you never added any of those soundings together and divided by the number of soundings so as to get the average sounding?

A. No, sir, not in this case.

Q. In any case?

A. No, sir, not that I know of, I have taken this section here, the result as obtained in some cases on the planemeter, and in some cases obtained by taking the average sounding.

Q. In how many instances was it platted on the average of sounding?

A. The average is taken simply on the detached ex-
467 tension of Oyster Bed training wall. In that case I average the soundings which appeared on the jetty itself, that is if I felt doubtful about having too much depth, I threw those out, in justice to Captain Carter or anybody concerned.

Q. So you used your own discretion then, about which ones of those soundings you would throw out in computing your average?

A. In some cases where I felt doubtful; I didn't want to do anything unjust to Captain Carter, or in the way of misrepresenting anything. In one or two cases I called Captain Carter's attention to dropping out a deep sounding where

I possibly could so as to show the jetty in the best way I possibly could.

Q. The result would have been, if you had any deep sounding, to diminish the average height of the crest as plotted?

A. Yes, sir.

Q. And so those soundings you thought too deep you threw out?

A. Yes, sir.

Q. And those not too deep you kept in?

A. Yes, sir, Captain Carter called my attention in the office to some particular soundings and thought I was too partial to him, he called my attention to it, but he came to find out it was not so.

Q. It was a matter of discretion which sounding you would take, and which you would throw out?

A. It was not entirely left to me, I consulted Mr. Cooper in that case.

Q. Did you leave out any that you thought were too shallow?

A. No, sir, I kept those in, my object in this work is to show things as they are.

Q. You said Captain Carter, just now, did you mean Captain Carter or Captain Gillette?

A. Captain Carter.

Q. When was that?

A. Some one sent in there and asked if I had taken that sounding and said Captain Carter asked about it.

468 Q. Then you didn't see Captain Carter?

A. Captain Carter sent in word.

Q. You dont know that he did?

A. Yes, sir.

Q. Did you see him, did you hear him?

A. Did I hear him?

Q. Yes.

A. Some one was sent in the office and came direct from the room and asked me the question and went directly back.

Q. It was not Captain Carter's own voice that communicated that to you?

Judge-Advocate: Who was the person?

A. I have no recollection of who it was, I was not paying any attention, they came and showed me those particular places and some soundings of 12 feet and Captain Carter thought I ought to consider those. He found out he was in error, I had thrown them out.

Judge-Advocate: You have several civil engineers in the office?

A. Yes, sir.

Q. Was it one of those?

A. I think it was some one connected with the office, I have been bothered so much in the office I didn't take any particular attention

Q. In the exercise of your discretion, in throwing out soundings, was in relation to that chart or this one (indicating)?

A. It was in relation to this one here (indicating).

Q. Was there any discretion whatever given you in regard to Cumberland Sound?

A. No, sir, I was to take things just as they were, with the exception of places like that, where it was left to my judgment. I wanted to do things just as they were in the construction of this work and I consulted Mr. Cooper.

Q. That was in relation to this map here, (indicating)?

A. Yes, sir.

Judge-Advocate: Has the court any question.

The President: None.

469 Judge Advocate; That is all the matter I have to present to the Court for today, may it please the Court.

President: Cannot you be ready before eleven o'clock tomorrow.

Judge Advocate; Not very well.

Mr. Blair;—If I may be permitted to state to the Court; the accused here is under a very heavy expense and the hours are very precious to him, and if the Judge Advocate can find it within his power to lengthen the sessions of this Court, even by an hour, it would be what I think is right. For instance, the Court will observe that today we have made almost no progress; two witnesses and two witnesses only, and I do submit to the Court that this is a very great hardship upon this defendant, that the case should progress so slowly. I know of course that the Judge Advocate came into this case late, but he has had since the 8th. of January, and he has had able assistants, two of them, and it does seem to me that better progress could be made or should be made, and I do urge upon the Judge Advocate and I urge upon the Court to endeavor to hasten this trial.

Judge Advocate:—As I have already stated to the Court, I shall expedite this case with all my ability, getting through as soon as it is possible to get through, and I find that to-

morrow morning I can place a witness on the stand at an early hour, a witness that promises to consume in examination some considerable time. Therefore, an adjourmnent until ten o'clock would be acceptable to me.

President; If there are no objections the Court will stand adjourned until ten o'clock tomorrow morning.

Here the Court at two fifty o'clock P. M., adjourned until tomorrow morning at ten o'clock A. M.

THOMAS F. BARR
Col. & Asst. Judge Adv. Genl
Judge Advocate.

470 United States Court Room,
Savannah, Ga.,
January 25th, 1898.

Court met pursuant to its adjournment of yesterday at 10.00 o'clock a. m.

Present:

All the members of the Court and the Judge Advocate.

The accused, his Counsel, and the Reporter W. O. Tarver, were also present.

The Court: Court will come to order.

JOHN W. O. STERLY, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examniation by the Judge-Advocate.

Q. What is your name?
A. John W. O. Sterly.
Q. What position do you occupy?
A. Chief Clerk in the United States Engineer's Office.
Q. Here in Savananh?
A. In Savannah.
Q. How long have you held that position?
A. I have held that position as chief clerk since Capt. Carter became disbursing officer.
Q. What date was that?
A. After the death of Gen. Gilmore, I think May 1st, 1888.
Q. Do you remember the date of the passage of the Act known as the River and Harbor Act of 1896?
A. June 3rd, 1896.

Judge-Advocate: I will put in evidence, of which the Court will take judicial notice, an Act making appropriations for the construction, repair and preservation of certain public works on Rivers and Harbos and for other purposes, which appears to have become law on June 3rd, 1896, having been passed at a previous date by the House of Representa-
471 tives over the veto of the President, and in the Senate on the date first named, June 3rd, two-thirds of the Senate agreeing to pass the same.

(Reading) "Harbor of Savannah, Ga.: Continuing Improvement five thousand dollars: Provided, That contracts may be entered into by the Secretary of War for such materials and work as may be necessary to complete the project of further improvement recommended by Capt. O. M. Carter in his reports of December 7th, 1894, and July 1st, 1895, and to complete the project for the steam-boat channel be-

tween Beaufort, S. C., and Savannah, Ga., recommended by Capt. O. M. Carter in his report December 4th, 1895, and mentioned in that report as Route 2, to be paid for as appropriations may from time to time be made by law not to exceed the amount of one million dollars, exclusive of amount herein or heretofore appropriated.

"Improving Cumberland Sound, Georgia: Continuing Improvement, Five Thousand Dollars: Provided, that contracts may be entered into by the Secretary of War for such material and work as may be necessary to complete the present project, to be paid for as appropriations may from time to time be made by law, not to exceed in the aggregate two million three hundred and forty five thousand dollars, exclusive of amount herein and heretofore appropriated."

Q. As Chief Clerk, you are the custodian of the public records of this headquarters?

A. Yes, sir.

Q. You have brought with you certain records which I have told you I should want in this case?

A. Yes, sir.

Q. Look at paper S. H. 29, 1896. What is that?

A. That is, "Capt. Carter encloses copy of advertisement inviting proposals for improving Harbor at Savannah, Ga., and requests authority to publis same in certain official newspapers; also requests authority to print 300 copies of accompanying specifications."

Q. That is a brief?

A. That is a brief.

472 Judge-Advocate: (Reading)

"United States Engineer Office,

River and Harbor Improvements and Fortifications in Georgia and North Eastern Florida. Savannah, Ga/? June 4th, 1896.

The Chief Clerk of the War Department,

Washington, D. C.

(Through Brig. Gen. Wm. P. Craighill, Chief of Engineers, U. S. A., Washington, D. C., and Colonel Peter C. Hains, Corps of Engineers, U. S. A., Division Engineer, South-East Division, Baltimore, Md.

"Sir:—

I enclose herewith a copy of an advertisement inviting proposal for improving harbor of Savannah, Ga., and request authority to publish the same in the following official newspapers:

6 insertions in the Morning News, Savannah, Ga.

6 Insertions in Florida Citizen, Jacksonville, Fla.
3 Insertions in Marine Journal, New York, N. Y.
3 Insertions in Engineering News, New York, N. Y.
3 Insertions in Engineering and Building Record, New York, N. Y.

I also request authority to print 300 copies of the accompanying specifications.

Very respectfully,
Your obedient servant,

O. M. CARTER,
Capt. Corps of Engrs., U. S. A.

(2 enclosures)"

The Court: That is the original?

Judge-Advocate: This is the original. Endorsed, "Capt. O. M. Carter to C. C., W. D., Encloses copy of advertisement inviting proposals for improving Harbor at Savannah, Ga., and requests authority to publish same in certain official newspapers; also requests authority to print three hundred copies of accompanying specifications, stamed at the top U. S. Engineer's Office, Savannah, Ga., recived June 12th, 1896.
473 On the bottom, "Received back, U. S. Engineers Office, Savannah, Ga., August 22nd, 1896, forwarded by the Division Engineer, received back Office Chief Engineers, Aug. 15th, 1896; with one and two and six copies.

(reading) First endorsement, "U. S. Engineer Office, 9 Pleasant Street, Baltimore, Md., June 6th, 1896. Respectfully submitted to the Chief of Engineers. I have no official information that an appropriation for this work has been made, nor have I any that the specifications have been drawn in accordance with an approved project. Attention is invited to the following:

Par. 34 seems to be a change in the form prescribed by the Department. Orders require when any change is made, the reasons for it must be given.

Par. 39, last part—2nd and 3rd line from bottom—is not understood.

Par. 40. There is nothing to guide the bidder as to length of haul. The place od deposit is to be somewhere at a locality to be approved by the Engineer, but if it is one mile, one price would be bid, and if it was ten miles, the price would be greater.

Par. 44. Prices for stone are by the ton in some cases and in others by the cubic yard. I would prefer all to be by the ton, but Capt. Carter may have some reason for the difference which I do not know.

Par. 49. Last part not understood.

A circular is referred to in the form of proposal, but it is not clear what the circular is.

These papers are submitted to the Chief of Engineers at the request of Capt. Carter, who it is understood will see him personally on June 8th in regard to them,

PETER C. HAINS,
Col. Corps of Engrs., U. S. A.
Div. Engineer, S. E. Division."

"2nd Endorsement.

474 "Office Chief of Engineers,
U. S. Army,
June 10th, 1896.

"Respectfully returned to Capt. Carter for revision, attention being invited to the foregoing endorsement. To be returned through Division Engineer,

By command of Brig. Gen. Craighill,

A. MACKENZIE,
Lieut. Col. Corps of Engineers.

15553,
Inclos. 1 and 2 accompanying.

3rd Indorsement,
U. S. Engineer Office,
Savannah, Ga., June 12th, 1896.

"Respectfully returned to the Chief of Engineers, U. S. A., (Through Col. Peter C. Hains, Corps of Engineers, U. S. A., Division Engineer, S. E. Division, Baltimore, Md.)

Par. 34 is correct, and is of the form required in all continuing contracts, said form having been approved by the Division Engr, the Chief of Engineers, and the Secretary of War, in July, 1892.

The form prescribed by the Department, relating to other contracts, is not applicable in the present instance.

Par. 39, second and third lines from bottom, mean exactly what is stated, viz: That, if required by the Engineer Officer in charge, stone put above mean low water shall be pitched or carefully put in position by hand, instead of being dumped on riprap or by a derrick. Mosaic work cannot be expected on an ocean bar, but if the contractor fails to deposit any stone within two feet of the prescribed ranges, he will not be paid for the same. Such requirements have been found to be necessary, and have always been inserted in all specifications for work in my district.

Par. 40. It is important that the dumping grounds should be provided by the contractor. This has been required, and

the length of haul cannot be given by the Engineer Officer
475 in charge. Since each bidder must select his own dumping ground, he will then know his length of haul.

Par. 44. Prices for firts-class and second-class stone are by the ton; for thir class and fourth class stone by the cubic yard. This is necessary, since it is desired to use much ballast for third class and fourth class stone, it being advantageous to receive such by the cubic yard.

Par. 49. A clerical error made the word 'accepted' read 'inspected'. That error has been corrected.

The word 'circular' is another clerical error. It should have read 'instructions and specifications'. That error has been corrected.

O. M. Carter,
Capt. Corps of Engrs., U. S. A.

(2 Enclosures returned)

4th Indorsement.
U. S. Engineer Office,
9 Pleasant st., Baltimore, Md.,
June 15, 1896.

Respectfully submitted to the Chief of Engineers.

The corrections noted in the third endorsement have been made, but as stated in my last endorsement, I have no official knowledge of an appropriation having made, and no project for its expenditure has yet passed through this office or been approved.

Peter C. Hains,
Col. Corps of Engrs., U. S. A.
Div. Engineer, S. E. Division.

Received Office Chief of Engineers, June 16th, 1896.

5th Indorsement.
Office Chief of Engineers.
U. S. Army, Aug. 15th, 1896.

Respectfully forwarded to the Chief Clerk of the War
476 Department with recommendation that the authority within asked for be granted. Amendment to the specifications has been made by this office.

A. MacKenzie,
Act'g Chief of Engineers.

15553, Enclos. 1 and 2 accompanying.

Received, War Department, Aug. 15, 1896. Authority No. 2238.

6th Indorsement.
War Department.

August 15th, 1896.

Approved, DANIEL S LAMONT,
Sec'y of War.

6 Enclos. *J. S.*

Received Office Chief of Engineers Aug. 15, 1896.

7th Indorsement.
Office Chief of Engineers,
U. S. Army,

August 15, 1896.

Respectfully returned to Capt. Carter inviting attention to the foregoing endorsements.

A. MACKENZIE,
15553, *Act'g Chief of Engrs.*

Enclos. 1 and 2 accompanying. (6 Enclosures)
Through Col. Peter C. Hains,
Corps of Engineers,
Division Engineer, South East Division."

Judge-Advocate: There is no record of an endorsement on the paper that it did pass through the office of Col. Hains.

(Continuing reading)

"8th Indorsement,
U. S. Engineer Office,
Savannah, Ga., Oct. 20th, 1896.

Respectfully returned to the Chief Clerk of the War
477 Department, Washington, D. C., with the following bills and vouchers in duplicate: Savannah Morning News, $4.80; Jacksonville, Fla. Citizen, $2.62; Engineer Record, New York, $4.20; Marine Journal Company, New York, $4.50; Engineering News, New York, $3.60; John C. Rankin Company, New York, $73.00. There are also forwarded herewith two slips of advertisements for file and one sample of job printing.

O. M. CARTER,
(15 Enclos.) *Capt. Corps of Engrs. U. S. A.*

Rec'd War Department Oct. 23rd, 1896.

9th Endorsement.

Audited and respectfully returned for payment. War Department, November 7th, 1896."

Q. Is that the enclosure (handing witness paper) referred to in that communication?

A. Yes, sir.

Q. What is that?

A. Specifications for improving Harbor at Savanah, to be opened on September 8th, 1896.

Q. (Handing witness paper) Is that the advertisement that was published?

A. Yes, sir.

Q. That is the original paper furnished the printer from which to publish the advertisement, or one like it?

A. One like it. The printer had another copy.

Q. The advertisement, as printed, was like this?

A. Yes, sir.

Q. What was its date?

A. The date of the advertisement was June 6th.

Q. What is the date given when bids would be opened?

A. September 8th.

Q. Of the same year?

A. Yes, sir; 1896.

478 Q. On or about the date given in the endorsement I read from the Chief Engineer's Office, August 15th, was any official information received at the office here of the action taken?

A. I was not at the office; I was not in Savannah at the time.

Q. Do the records of the office show that any official information was received?

A. On August 15th?

Q. Any papers on file to show?

A. A telegram is on file notifying Mr. Connolly to advertise.

Q. Have you those telegrams?

A. (Witness handed Judge-Advocate the papers)

Judge-Advocate: Here is a telegram (reading) "August 15, 1896, dated Washington, D. C., to Connolly, U. S. Engineer's Office, Savannah, Ga. Advertise immediately all work, Fernandina, Savannah and inside route, to be opened Tuesday, Sept. 8th. No change in list of papers. I have specifications. Carter, Engrs."

I offer both of these in evidence, and read them, so that they may go on the record. I suppose it is all right. They are not originals.

Mr. Blair: We make no objections.

Judge-Advocate: (Reading) "New York. August 15. To Connolly, U. S. Engineer Office, Savannah, Ga.

Date all advertisements June 6th, but all will be opened Sept. 8th.

CARTER *Engr.*"

Stamped, "U. S. Engineer Office, Savannah, Ga. Received Aug. 15, 1896".

Q. Where were you on August 15th?
A. On August 15th I was in New York in the morning.
Q. Did you see the accused on that day in New York?
A. Yes, sir.
Q. Where?
A. At the University Club in New York.
Q. In relation to these specifications?
479 A. Yes, sir.
Q. What occurred?
A. Capt. Carter went to Washington,—told me that he was going to Washington to have the specifications approved, and that the specifications would be sent to me from Washington to have them printed, or rather to have corrections made, because the specifications were already in print. Then I was requested to notify Capt. Greene when the project of expenditures—No; I am in error there.
Q. State it accurately?
A. What I refer to occurred on another date.
Q. Confine yourself to the interview we are talking about. Was that all that occurred between you and Capt. Carter at that time?
A. The specifications were sent to me from Washington, and I received those on the 17th.
Q. 17th of what month?
A. 17th of August.
Q. Where were you then?
A. Patchogue, Long Island.
Q. Did you see the accused about that time?
A. I think I saw Capt. Carter at that time, and he told me to have the specifications ready; that he wanted a second proof of the copy at a certain date.
Q. You say you went to Patchogue, Long Island?
A. Yes, sir.
Q. When was that?
A. 1896; I arrived there on the 5th of August, on a vacation.
Q. Did you see Capt. Carter before going there?
A. Yes, sir, I did.
Q. What day?
A. I saw Capt. Carter on the 4th, in the morning.
Q. Fourth of August?
A. 4th of August. In the evening I saw him; not in
480 the morning. I arrived with Capt. Carter on the steamer sailing from Savannah on the 1st of August at 10 o'clock

at night, and we arrived in New York on the 4th of August at 8 o'clock in the morning.

Q. Did you have any instructions from Capt. Carter at that time as to what action to take in certain contingencies?

A. To open his mail at the University Club, and as soon as I would receive notification that the project of expenditure had been approved, to have the specifications printed, and that I would be notified to that effect from Washington when the project would be approved; and I was also requested to notify Capt. Green if the project was approved.

Q. Where were you to address Capt. Green?

A. In Stamford, Conn.

Q. What are his initials?

A. B. D. or D. B. I forget which?

Q. Do you know who Capt. Green is?

A. Yes sir.

Q. Who is he?

A. He was formerly an engineer officer and a contractor.

Q. What is he now?

A. He is a contractor.

Q. Has he been a contractor engaged in business in this engineering district?

A. Yes, sir.

Q. How often?

A. I have seen Capt. Green in Savannah since I have been in Savannah, since 1885.

Q. Do you know if he is a member of the Atlantic Contracting Company

A. No, sir; I do not know that he is a member of the Atlantic Contracting Company.

Q. Did you comply with that request?

A. Yes, sir; I did.

Q. Had Capt. Greene ever been a bidder for contracts in this District to your knowledge?

481 A. I have seen his name on bonds and sureties, but, as a bidder, I don't think there was a contract in his name.

Q. Did you have any instructions to notify any other parties when the projects were approved?

A. No, sir.

Q. Did you notify any other party?

A. No; I did not. I notified Capt. Carter.

Q. Did you notify Capt. Greene, as directed?

A. Yes, sir; I did.

Q. How did you notify him?

A. I notified him by letter.
Q. Do you remember the date of the letter?
A. It must have been the same date when I received notice that the project had been approved.
Q. From whom did you receive that notice?
A. From Capt. Goethals, Engineer's Office, Washington.
Q. How did you hear,—by telegram?
A. Yes, sir; a personal telegram.
Q. Did you hear from him subsequently?
A. Yes, sir; I had a letter from him.
Q. About these specifications?
A. Yes, sir.
Q. Have you that letter?
A. No; I have not.
Q. What has become of it?
A. I have destroyed it.
Q. Do you remember what it stated?
A. It stated that while the project was approved, and the specifications were allowed, yet there was some clause about dredging. There was some trouble about dredging, and that Col. MacKenzie wanted to see Capt. Carter about it.
Q. How long did you stay at Patchogue?
A. I staid there until the beginning of September.
Q. Were you in New York City in the intermediate time?
482 A. Yes, sir; several times.
Q. Was it by your order that the specifications were printed?
A. Yes, sir.
Q. You remember the date?
A. The specifications were printed, and I must have given a verbal order about the 13th of August, 1896.
Q. By the accused,—by Capt. Carter?
A. No; a verbal order to the printer.
Q. You were acting then under previous instructions?
A. I acted under previous instructions.
Q. Capt. Carter was not then in New York?
A. Capt. Carter was not then in New York.
Q. From what were the specifications printed by the printer?
A. From a duplicate of these approved specifications,—a printer's copy.
Q. This, then, as it stands, are the specifications as they were printed at that time?
A. No, sir.

Q. Were there any alterations made after this was submitted?
A. Yes, sir.
Q. This appears to have been amended?
A. The proof was made from another set, a duplicate of that as it was sent to Washington.
Q. But that was the date,—on the 13th of August?
A. Yes, sir.
Q. On what day did you receive from Washington specifications on which the final proof was made?
A. On the 17th of August, 1896.
Q. That was for the final report?
A. That was this specification that is before you,—the approved specification.
Q. While you were at Patchogue, were you in communication with Capt. Carter?
A. Yes, sir.
483 Q. Where was he?
A. Capt. Carter was away on a summer vacation. He had authority to be away from his station.
Q. Had he directed you to communicate with him?
A. Yes, sir; Capt. Carter directed me to communicate with him, but I have forgotten the address.
Q. Did you reach him?
A. I could not reach him. I reached him at times, but I failed to reach him after August 11th. I failed to reach him by telegraph.
Q. Were you notified that any of your telegrams were not received, by the telegraph office?
A. Yes, sir.
Q. How were those addressed that he did receive?
A. Mr. C. O. Montgomery.
Q. What place?
A. I don't know the place, I have forgotten.
Q. What state or locality?
A. It was in Canada.
Q. Were you instructed by Capt. Carter to so address him?
A. Yes, sir.
Q. When did you see Capt. Carter first after you took the specifications to the printer?
A. On August 15th.
Q. Where did you meet him?
A. At the University Club, New York.
Q. At what hour?

A. About nine o'clock.
Q. In the morning?
A. In the morning.
Q. Well, what took place then?
A. Capt. Carter told me that he would go to Washington.
Q. (Handing witness paper) This original letter which I read to you, one indorsement says, "Through Col. Peter
484 C. Haines, Corps of Engineers, S. E. Division;" does that paper appear to have gone through that division?
A. No, sir; there is no endorsement.
Q. The file marks, however, show that it got into the office here properly.
A. It was received back in the Savannah engineer's office Aug. 22d, 1896.
Q. Do you know where they were in the intermediate time, of your own knowledge?
A. They were in the hands of Capt. Carter.
Q. Do you know of your own knowledge that this was in the hands of Capt. Carter, this original letter?
A. I handed those to Capt. Carter in the University Club.
Q. This original letter of Capt. Carter asking for authority to advertise?—do you know of your own knowledge when it reached the Savannah office?
A. No, sir, I do not.
Q. You were not in the office when it was received here?
A. I was not here.
Q. You only know from the official stamp?
A. Yes, sir.
Q. Where were the specifications first sent, do you know, from Washington?
A. They were sent to me.
Q. At Patchogue?
A. At Patchogue.
Q. For yourself or for—?
A. For Capt. Carter.
Q. Were sent to Capt. Carter, then, to your care?
A. Yes, sir.
Q. You received them on what date?
A. On Monday the 17th, of August, 1896.
Q. When did you meet Capt. Carter again, and did
485 you then return the approved specifications to him?
A. I met Capt. Carter again either on that day or the following Thursday.

Q. Did he return to you the printed specifications that you had handed to him?

A. When I met Capt. Carter I handed the specifications to him.

Q. What is G. R. 9, 1896?

A. Transmit copy. "Office of Chief Engineer, U. S. A.—

Q. You need not read it.

A. Transmitting Act of June 3d, 1896.

Judge-Advocate: I offer it in evidence and read it that it may go on the record. (Reading) "Office of the Chief of Engineers,

United States Army,
Washington, D. C., June 19, 1896.

Capt. O. M. Carter,
Corps of Engineers, Savannah, Ga.

Capt.:

The 'Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes,' of June 3d, 1896, contains items for works of improvement within your district as specified below.

"Please submit, at as early a day as practicable, projects for the expenditure of the amounts appropriated, specifying in each case to what portion of the work you propose to apply the funds, reference being had to the approved plan, and to the estimate upon which the present appropriation is based. In this connection it is desired that for each work there be submitted a concise resume, setting forth the plan and project now in process of execution, and your judgment as to its worthiness. A project, with estimate of cost, will be required for each new work, and for those that are expended by authority, together with the proposed application thereto of the present appropriation, unless such project
486 and estimate have been already furnished, when reference thereto should be made. In this connection see Section 3663, Revised Statutes. Each improvement should be the subject of a separate communication; and it is desired that you state distinctly the manner in which it is proposed to carry on the work, with the reasons therefor—whether by contract, after inviting proposals in the usual way, or by hired labor.

A copy of the Act is herewith.

By command of Brig. General Craighill;

Very respectfully,
Your Obedient servant,
A. MacKenzie,
Lieut. Col. Corps of Engineers."

Then follows an extract from the Act of Congress which I have already read.

Q. Now, look at C. S., page 32—C. S. No. 2—what is that?

A. Capt. Carter submits his project of expenditure,—Cumberland Sound, Ga., on June 22, 1896, to the Chief of Engineers.

Judge Advocate: I offer this letter in evidence and read it to the Court, that it may appear upon the record:—

"United States Engineer Office,
Savannah, Ga. June 22, 1896.

Brig. Gen. Wm. P. Craighill,
Chief of Engrs. U. S. A.
Washington, D. C.,
(Through Col. Peter C. Haines, Corps of Engrs., U. S. A.,
Division Eng., S. E. Division, Baltimore, Md.)

"General:

In compliance with instructiojs contained in your letter of the 19th, inst., I have the honor to submit the following
487 project for the expenditure of $5,000, appropriated by Act of Congress, dated June 3, 1896, for 'Improving Cumberland Sound, Georgia: Continuing Improvement.'

The above Act further provides: "That contracts may be entered into by the Secretary of War for such material and work as may be necessary to complete the present project, to be paid for as appropriations may from time to time be made by law, not to exceed in the aggregate two millions three hundred and forty-five thousand dollars, $2,345,000) exclusive of amount herein and heretofore appropriated". The present project of improvement referred to in this Act is given in the report of a Board of Engineers, dated Dec. 18, 1895, to which I respectfully refer for details. The project contemplates the formation of a channel across the bar not less than nineteen feet deep at mean low water. This is to be accompilshed by the construction of two jetties of stone, with a mattress hearting wherever admissible, resting upon a foundation mattress of brush, starting from the shores on opposite sides of the entrance and extending sea-ward upon converging lines so directed that the ends will be parallel to each other, and about 3,900 feet apart.

The scour between the jetties is to be aided by dredging, if necessary.

The cost of the improvement is etsimated at $2,350,000, exclusive of expenditures already made and the Act of 1896 provides that contracts may be entered into for that amount.

The locality is worthy of the exepnditure of the sum contemplated by the project.

There were no funds available on July 1, 1895a. The entire sum of $5,000 appropriated by the Act of June 3, 1896 will be required for engineering and contingencies.

Any work executed during the year should be done by contract, as prescribed by the Act of June 3, 1896, and
488 should consist in extending and raising both jetties as provided in the project approved by the Act, and given in detail in the report of Dec. 18, 1895.

Very respectfully,
Your obedient servant,
Capt. Corps of Engineers. U. S. A."

There is no impression of any signature to the letter.

Q. Look at C. S. 10, 1896?

A. (Witness reading from paper) "Approved project of June 22, 1896, for improving Cumberland Sound, Georgia." From "Chief of Engineers, Aug. 11, 1896."

Judge Advocate: I offer in evidence and read this communication from the Chief of Engineers. (Reading)

Subject: Cumberland Sound.

Office of the Chief of Engineers,
United States Army.
Washington, D. C., Aug. 11, 1896.

"Capt. O. M. Carter,
Corps of Engineers,
Savannah, Ga.

Captain:—

Your letter of Une 22, 1896, submitting project for expenditure of appropriation of $5,000, made by the River and Harbor Act of June 2, 1896, together with the amount therein authorized to be applied to work under the continuing contract system, for improving Cumberland Sound, Ga., was duly received, and submitted to the Secretary of War by indorsement as follows;—

'2nd Indorsement,
Office Chief of Engineers,
U. S. Army,
August 3, 1896.

"Respectfully submitted to the Secretary of War.

The River and Harbor Act of June 3, 1896, contains a
489 provision as follows:—'

'Improving Cukberland Sound, Ga.: Continuing Improvement, five thousand dollars: Provided, That contracts

may be entered into by the Secretary of War for such material and work as may be necessary to complete the present project, to be paid for as appropriations may from time to time be made by law, not to exceed in the aggregate two million, three hundred and forty-five thousand dollars, exclusive of amount herein and heretofore appropriated".

The project upon which this appropriation is based was formulated and recommended by a Board of Engineers constituted to consider the subject of the improvement of Cumberland Sound.

A copy of the Board's report, dated Dec. 18, 1895, was sent by the Secretary of War Feb. 12, 1896, to the Chairman of the River and Harbor Committee of the House of Representatives.

The Cumberland Sound is an important highway of commerce. All the commerce of St. Marys, Ga., and ninety per cent of the commerce of Fernandina, Fla., are dependant upon water transportation through this sound. A number of railroad lines, with their connections, traversing the largest orange, phosphate and yellow pine regions of the United States, as well as the cotton belt, and the coal and iron districts of the Southern States, find an outlet to the Atlantic ocean through Cumberland Sound.

The work already done by the United States on this water way is likely to cause shifting of shoaling of the channel to such an extent as to greatly interfere with shipping unless active operations are begun and the work authorized by the Act carried out.

For these reasons I recommend that the within project for the expenditure of the appropriation of $5,000 made by the Act, be approved, and that contracts be let for the completion of the work in accordance with the provisions of the law and the regulations of the Department.

A. MacKenzie,
Acting Chief of Engineers."

490 "The paper has been returned to this office by War Department, indorsement of August 6, 1896, "approved as recommended by the Acting Chief of Engineers in the preceeding inforsement hereon."

"It it held that work under continuing contracts may be carried on as rapidly as the contractor may choose and the engineering and other conditions permit, payment to be made as provided for by law. Your attention is called to the necessity in case the contractor elects to do work in advance of future appropriations by Congress, of providing for the

payment of necessary expenses of superintendence and contingencies from the funds now available.

Very respectfully, your obedient servant,

A. MacKenzie,
Acting Chief of Engineers.

Through Col. Peter C. Haines,
Corps of Engineers.
Division Eng. Southeast Division."

It appears from the indorsement that this passed through the Division Engineers' office Baltimore Md., and was transmitted to Capt. Carter.

Q. Please state from your papers C. S. 5,/ 1896?

A. (Witness handed counsel the paper)

Q. Do your records show what was the first day on which these advertisements appeared in the papers?

A. Yes, sir.

Q. What was the first date?

A. On August 16; that is the order.

Q. That was in what paper?

A. That was in the Savannah Morning News.

Q. Do your records show what date it first appeared in the Florida Citizen of Jacksonville?

A. Under date of August 14, they were ordered to be printed on August 17.

491 Q. By the Florida Citizen Aug. 17th—?

A. Yes, sir.

Q. Now on page 48?

A. Marine Journal, Aug. 22, 1896.

Q. How many advertisements?

A. Three advertisements.

Q. When was it first printed in the Engineering and Building Record, New York?

A. August 22.

Q. How many times?

A. Three times.

Q. Now look at page 50 and tell me when it was first printed in the Engineering News, New York?

A. August 20; three insertions were ordered.

Q. When were the specifications received from the printer?

A. They left the printer on August 21.

Q. That is in New York?

A. The New York printer.

Q. Do your records show when they were received in Savannah?

A. The first issue was on Aug. 24th,.

Q. When were the bids to be opened?
A. On Sept. 8th.—
Q. How were those specifications distributed,—sent out?
A. I was not here at the time, but the records show that they were sent out by letter.

The following papers and copies of papers were identified by the witness and offered in evidence and read by the Judge Advocate:

C. S. 6, 1896.

"Florida Central & Peninsula R. R. Co.
H. R. Duval, President.

32 Liberty St.
New York, June 8, 1896.

"Dear Captain Carter:—

492 If under the River and Harbor Bill, improvements will go on in Fernandina under the continuous list, I have a friend who would like to bid for the contract to do the work, and if you will kindly advise me when it will be necessary to make the investigation prerequisite to the contract, I shall be very much obliged to you.

Yours very truly,

H. R. DUVAL.

"Captain O. M. Carter,
Corps of Engineers, U. S. A.
Savannah, Ga."

Copy of letter C. S., 2, Page 64.

"United States Eng. Office,
Savannah, Ga., Aug. 24, 1896.

"Mr. H. R. Duval,
Preisdent Florida Central & Peninsula R. R. Co.
32 Nassau St., New York, N. Y.

Dear Sir:—

Replying to your letter of June 8, 1896, I transmit herewith one copy of the specifications for improving Cumberland Sound, Georgia. Should your friend after reading the specifications, desire to bid upon the work, please send him to me, when all information concerning the work will be cheerfully given him, and he will be furnished with two more copies of the specifications, in order to enable him to submit his bid.

Very truly yours,

O. M. CARTER,
Capt. Corps of Engs. U. S. A.

(One inclosure.)"
Fire C. S. 11, 1896.

"Jacksonville, Fla., August 19, 1896.

"Capt. O. M. Carter, Corps of Engineers,
Savannah, Ga.

493 "Dear Sir:—

I notice your advertisement in the Florida Citizen, calling for sealed proposals for constructing jetties at Cumberland Sound, and as I contemplate bidding on the work, I will appreciate it if you will furnish me with such information as will aid me to bid intelligently.

Yours truly,

CHARLES MARVIN.

Copy of letter C. S., 344.

"United States Engineer Office,

"Mr. Charles Marvin,
Jacksonville, Florida.

"Dear Sir:—

In compliance with your request of 19th, inst., I herewith transmit you one copy of specifications for constructing jetties at Cumberland Sound. Other information concerning this work can best be given you at this office. If you desire to bid upon the work, I shall take pleasure in furnishing you with this information and with two more copies of the specifications.

Very respectfully yours,

O. M. CARTER,
Capt. Corps of Engineers,
U. S. A.

"(One enclosure.)

File C. S. 13/ 1896.

"Jutte & Foley Co., Contractors for Heavy Masonry, Deep Foundations, Tunneling, Rock and Earth Work, Pile Driving and Timber Work, Street Railway Building.
Office, Old No. 247, Old No. 102,
Water St., Pittsburgh, Pa.
August 21, 1896.

O. M. Carter, Captain of Engineers,
U. S. Engineer Office, Savannah, Ga.

494 "Dear Sir:—

Please send us specifications for the jetty work at Cumberland Sound, Ga., to be let 8th, Sept. 1896.

Very respectfully yours,

JUTTE & FOLEY CO.,
W. C. JUTTE,
Prest."

Copy of Letter, G. R. 343.

United States Engineer Office.

Savannah, Ga.,
August 24, 1896.

"Mr. W. C. Jutte,
President Jutte & Foley Co.
Pittsburgh, Pa.

Dear Sir:—

In compliance with your request of 21st, inst., I herewith transmit one copy of specifications for constructing jetties at entrance of Cumberland Sound, Georgia.

If after eading these specifications, you intend to bid upon the work, please inform me, and I shall send you two other copies of same.

Very respectfully, yours,
O. M. CARTER,
Corps of Engineers, U. S. A."

File C. S. 13/ 1896.

"Jutte & Foley Co. Contractors for Heavy Masonry, Deep Foundations, Tunneling, Rock and Earth Work, Pile Driving, and Timber Work, Street Railway Building. Office, No. 247, Old No. 102 Water St., Pittsburgh, Pa.

August 26, 1896.

"Capt. O. M. Carter,
U. S. Engineer Office,
Savannah, Ga.

Dear Sir:—

495 "One copy of specifications for constructing jetties at the entrance to Cumberland Sound, Ga., duly received and contents noted. We expect to bid on this work, and would be pleased to have you mail us two additional copies and oblige,

Yours respectfully,
JUTTE & FOLEY CO.,
C. CRAMER,
Sec."

Copy of Letter, C. S. No. 2/78.

"United States Engineer Office,
Savannah, Ga., Aug. 31, 1896

The Jutte & Foley Co.,
Pittsburgh, Pa.

Dear Sirs:—

In compliance with your request contained in your letter

of 26th, inst., I send you herewith two more copies of specifications for improving Cumberland Sound, Georgia.

Very respectfully, yours,

O. M. CARTER,
Capt. Corps Engineers,
U. S. A."

(Two enclosures.)
File C. S. 13, 1896.

Jutte & Foley Co., Contractors for Heavy Masonry, Deep Foundations, Tunneling, Rock and Earth Work, Pile Driving and Timber Work, Street Railway Building. Office, New No. 247, Old No. 102, Water St., Pittsburgh, Pa.—September 2, 1896.

Capt. O. M. Carter, U. S. Engineer's Office., Savannah, Ga.

"Dear Sir:—

We return you herewith the blank advertisements on the jetties at Cumberland Sound, Ga., including the extra copies you sent us. We have reconsidered the matter of bidding and do not intend to bid now. Thanking you for your kindness, we remain,

Yours, respectfully,

496 "THE JUTTE & FOLEY CO.,
C. CRAMER,
Sec.

Dictated, C. C."
File C. S. 14/1896.

Tallaluh Falls, Ga.,
August 24, 1896.

"Capt. O. M. Carter,
Corps of Engineers, U. S. A.,
Savannah, Ga.

Dear Sir:—

Please send me a set of specifications for constructing jetties at Cumberland Sound, Georgia, and blank form for proposals and oblige,

Yours, respectfully,

RITTENHOUSE R. MOORE."

Copy of Letter C. S. No. 2, Page 66.

"United States Engineer Office.
Savannah, Ga. August 26, 1896.

Mr. Rittenhouse R. Moore,
Tallulah Falls, Georgia.

Dear Sir:—

In compliance with request contained in your letter of the 24th, inst., I transmit herewith one full set of specifica-

tions, for constructing jetties at entrance of Cumberland Sound, Georgia.

Very respectfully, yours,

O. M. CARTER,
Capt. Corps of Engrs. U. S. A.

(3 enclodures.)

497 File C. S. 15/1896.

"Richard Parrott, Dock Builder, and Foundation, Piling, Residence, 353 Broadway, Newburgh, N. Y., August 24, 1896.

O. M. Carter,
Capt. Engrs.,
Savannah, Ga.

Dear Sir:—

Please send specifications for construction of jetties at Cumberland Sound, Ga., and oblige,

Yours very truly,

RICHARD PARROTT."

Copy of Letter C. S. Page 68 No. 2.

"United States Engineer Office,
Savannah, Ga., Aug. 26, '96

Mr. Richard Parrott,
Newburgh, N. Y.

Dear Sir:—

In compliance with request contained in your letter of 24th, inst., I transmit herewith one copy of the specifications for improving Cumberland Sound, Georgia.

Should you, after reading the same, desire to put in a bid for doing the work, please inform me and I shall take pleasure in sending you two more copies of the specifications.

Very respectfully,

O. M. CARTER,
Capt. Corps Engineers, U. S. A.

(One enclosure.)

498 File C. S. 16, 1896.
"Bouker Contracting Company,
Telford and Machine Crushed Stone,
For Roads or Concrete,
Freighting and Scows for Charter. No. 110
Wall St., New York, N. Y.
Aug. 25, 1896.
Capt. O. M. Carter, U. S. A.
U. S. Engineer's Office,
Savannah, Ga.

Sir:—

Will you kindly send us the Plans and specifications for constructing Jetties at Cumberland Sound, Ga., with any added information pertaining to the same. Will this contract be for the entire appropriation, not to exceed $2,345,000? If so, what will be the bond required?

Yours truly,
BOUKER CONTRACTING CO.,
JOHN A. BOUKER,
President."

Letter Book, C. S. No. 2, Page 72.
United States Engineer Office,
Savannah, Ga., August 27, 1896.

Mr. John A. Bouker,
President Bouker Contracting Company,
No. 110 Wall St., New York, N. Y.

Dear Sir:—

I transmit herewith one copy of specifications for constructing jetties at entrance to Cumberland Sound, Georgia, which I think, gives all the information called for in your letter of the 25th inst. Should you decide to visit the vicinity of the work, I shall be pleased to give you all the information in my power, and if after an examination you should
499 decide to submit bids, I shall furnish you with two more copies of the specifications.

Very respectfully yours,
O. M. CARTER,
(One inclosure)" *Capt. Corps of Engrs., U. S. A."*

File C. S., No. 17, 1896.
"The Pennsylvania Midland Railroad.
Bedford, Pa., August 26, 1896.

Captain Carter,
U. S. Engr. Corps,
Savannah, Georgia.

Dear Sir:

Will you kindly send me at once copy of specifications and form of approval for the Cumberland Bar work at Fernandina. I expect you may have possibly sent copies to Mr. Duval, but as he is absent in New York, I have no means of ascertaining if this is so or not.

I beg to remain, dear sir,

Yours sincerely,
JOHN W. RUTHERFORD."

"Telegram:
Bedford, Pa., Aug. 26, 1896.

To Capt. Carter, U. S. Engr. Corps.,
Savannah, Ga.

"Kindly send me specifications and proposals for Cumberland Bar work by first mail to me at Bedford, Pa.

"J. W. RUTHERFORD."

"Telegram:
"Yulee, Fla., Sept. 3, 1896.

"Capt. O. M. Carter,
Savannah, Ga.

"Veni, Vidi.
J. W. RUTHERFORD."

500 Letter Book No. 2, C. S. Page 71.
United States Engineer Office,
Savannah, Ga., Aug. 27, 1896.

Mr. J. W. Rutherford,
Bedford, Pennsylvania.

Dear Sir:—

In response to request contained in your telegram of 26th st., I transmit herewith one complete set of specifications for improving Cumberland Sound, Georgia.

Very respectfully yours,
O. M. CARTER,
Capt. Corps. of Engrs., U. S. A.

(three enclosures.)

File C. S., 18, 1896.
Jacksonville, Fla., Aug. 26, 1896.

O. M. Carter,
Capt. Engineers,
Savannah, Ga.

Dear Sir:—
Please send me blank forms and proposals for the construction of jetties at Cumberland Sound, Ga., as per advertisement in Engineering Record, also for work at Fernandina, and any information that may be necessary for me to bid intelligently.

Yours truly,
H. L. BABBIT,
P. O. Box 241."

Letter Book, C. S. No. 2, Page 70.

Mr. H. L. Babbit,
P. O. Box 241,
Jacksonville, Fla.

Dear Sir:—
Replying to your inquiry of the 26th inst., I send herewith
Replying to your inquiry of the 26th inst., I send here-
501 with one copy of the specifications for constructing jetties at Cumberland Sound, Georgia, which contains, I think all of the information except that which can be derived from an examination of the charts, which I shall be pleased to show you at this office. If, after an examination of the work, should you desire to bid upon the same, I shall take pleasure in furnishing you with two more copies of the specifications.

Very respectfully yours,
O. M. CARTER,
Capt. Corps of Engrs., U. S. A.

(One enclosure.)

File C. S. 19, 1896.
Gulf Towing Company,
Sabine Pass, Texas.

Capt. O. M. Carter,
U. S. Engineer,
Savannah, Ga.

Dear Sir:—
Please mail us blank proposals with all information concerning the construction of jetties at Cumberland Sound, Ga.

Very respectfully yours,
GULF TOWING CO.,
Sabine Pass, Texas.

Letter Book, No. 2, Page 73.
United States Engineer Office,
Savannah, Ga. Aug. 29, 1896.

Gulf Towing Co.
Sabine Pass, Tex.

Sir:—

As requested in your letter, I inclose full set of specifications for work at Cumberland Sound.

Very respectfully,

O. M. CARTER,
Capt. Corps Engrs. U. S. A.

(3 Inclosures)

502 File C. S. No. 21, 1896.

Baltimore, Maryland, Aug. 28, 1896.

Capt. O. M. Carter,
Capt. Engrs. U. S. Engineer Office,
Savannah, Ga.

Dear Sir:—

Will you kindly send us the plans and specifications for the construction of jetties at Cumberland Sound, Ga., as we would like to figure on same, and oblige,

Yours very truly,

SANFORD & BROOKS,
J. A. D.

Letter Book, C. S. No. 2, Page 75.
United States Engineer Office,
Savannah, Ga. August 31, 1896.

Messrs Sanford & Brooks,
21 South Gay St.,
Baltimore, Maryland.

Dear Sirs:—

In compliance with request contained in your letter of 28th, instant, I transmit herewith one complete set of specifications for constructing jetties at entrance to Cumberland Sound, Georgia.

Very respectfully yours,

O. M. CARTER,
Capt. Corps of Engrs. U. S. A.

(Three enclosures.)

503 File No. C. S. 221, 1896.

"American Dredging Company, Office 236 Walnut St., Philadelphia, September 1st, 1896. O. M. Carter, Captain of Engineers, Savannah, Ga. Sir: Will you please be kind

enough to send us a copy of the specifications for the improvement of Cumberland Sound, Ga. and Oblige, Very Respectfully, Etc., American Dredging Co., James M. Knipe, Secretary."

Copy of letter C. S. 2/ page 81.

"United States Engineer's Office, Savannah, Ga., September 3rd, 1896 American Dredging Company, Walnut St., Philadelphia, Pa. Dear sirs: In compliance with your request of the 1st inst. I transmit herewith one complete set of specifications for constructing jetties at Cumberland Island Georgia. Very respectfully yours, O. M. Carter, Captain Corps Engineers. 3 Enclosures."

File No. C. S. 23, 1896.

"Fernandina, Fla. September 2nd, 1896. Captain O. M. Carter, Savannah, Ga. Dear Sir: Will you please send me the plans and specifications for the bids for making and placing the mats at Cumberland Sound. I would like all information in connection with the requirements, including bonds, etc.. You will oblige, Yours very truly, O. G. Darling."

504 Copy of letter C. S. 2, page 80.

United States Engineer Office,
Savannah, Ga., September 3, 1896.

Mr. O. G. Darling,
Fernandina, Fla.

Dear Sir:

In compliance with your request of the 2nd inst. I transmit herewith a copy of the specifications for constructing jetties at Cumberland Sound, Ga. Further details can be had at this office if desired.

Very respectfully yours,
O. M. Carter,
Captain Corps Engineers.

1 Enclosure:

File No. C. S. 24, 1896.

Augusta, Ga., Sept. 3rd, 1896.

Captain O. M. Carter,
U. S. Engineer,

Please send me three copies of specifications for jetty work at Cumberland Sound.

A. J. Twiggs.

Copy of letter C. S. 2, Page 83.

United States Engineer Office.

Savannah, Ga. September 4, 1896.

Mr. A. J. Twiggs, A
Augusta, Ga.

Dear Sir:

In compliance with your telegraphic request I transmit herewith one complete set of specifications for constructing jetties at entrance to Cumberland Sound, Ga.

505 Very respectfully yours,

O. M. CARTER,
Captain Corps Engineers
U. S. A.

3 Enclosures.

File No. C. R. 29, 1896.

Will. R. Maher,
General Contractor,
Street Paving and heavy Masonry Work,

Atlanta, Ga. August 22, 1896.

Captain O. M. Carter,
Savannah, Ga.

Dear Sir:

Kindly send me specifications for harbor and jetty work to be let on September 8.

Yours truly,

WILL R. MAHER.

Copy of letter S. H. 168.

United States Engineer Office.

Savannah, Ga. August 24, 1896.

Mr. Will R. Maher,
Atlanta, Ga.

Dear Sir:

In compliance with your request of the 22nd inst. I transmit herewith one copy of specifications for improving harbor of Savannah, Georgia.

If, after reading these specifications, you intend to bid upon the work please inform me and I shall send to you two more copies of the same.

Very respectfully yours,

O. M. CARTER,
Capt. Corps of Engrs., U. S. A.

(One Enclosure)

506 File No. G. R. 40, 1896.

John L. Grim, General Contractor, 514 & 515 Girard Building, Philadelphia, Pa. Factories, Bridges, Wharves, Deep Water and Compressed Air Work. Special Attention to Railroad Work.

O. M. Carter, August 28, 1896.
Capt. Engineers.

Dear Sir:

Please send me specifications and blank forms of proposals for constructing jetties at Cumberland Sound Georgia, and oblige,

Yours truly,
JOHN L. GRIM.

Also please send specifications and blank forms of proposals for improving harbor of Savannah, Georgia, and oblige, Yours. John L. Grim.

Copy of letter C. S. 76.

"United States Engineer Office.
Savannah, Ga. August 31, 1896.

Mr. John L. Grim,
514 & 515 Girard Building,
Philadelphia, Pa.

Dear Sir:

In compliance with request contained in your letter of the 28th inst., I transmit herewith one complete set of specifications for constructing jetties at entrance to Cumberland Sound, Georgia.

Very respectfully yours,
O. M. CARTER,
(Three enclosures). *Capt. Corps Engrs. U. S. A.*

507 File No. G. R. 42, 1896.

"Savannah, Ga., Septe,ber 4, 1896.

Dear Sir:

The name of the party desiring the specification for harbor work is R. A. Johnson, Augusta, Ga.

Respectfully
BARROW & OSBORNE.

Capt. O. M. Carter,
Savannah, Ga.

"Savannah, Ga., September 4, 1896.

Capt. O. M. Carter,
Savannah, Ga.

Dear Sir:

We have a client who asks us to get from you immediately

copies of specifications for the jetty work for the Savannah Harbor, and Cumberland Harbor. We would like these specifications at once.

Very truly,

BARROW & OSBORNE.

Copy of letter G. R., X-2, page 363.

"United States Engineer Office,
Savannah, Ga., September 4, 1896.

Messrs. Barrow & Osborne,
Savannah Ga.

Dear Sirs:

Replying to your inquiry of the 4th inst. please send to me the name and address of the party desiring specifications.

Very respectfully yours,

O. M. CARTER,
Capt. Corps Engineers U. S. A.

508 Copy of letter G. R., X-2, page 364.

"United States Engineer Officer,
Savannah, Ga, September 4, 1896.

Mr. R. A. Johnson,
Augusta, Ga.

Dear Sir:

In compliance with your requested delivered through Messrs. Barrow & Osborne, Savannah, I send to you herewith one copy of the specifications for improving Harbor at Savannah, Georgia. If after reading the specifications you desire to bid upon the work please inform me when two more copies of the specifications will be sent to you.

Very respectfully yours,

O. M. CARTER,
Capt. Corps Engineers, U. S. A.

(One enclosure)

File No. G. R. 33, 1896.

"The International Contracting Company, Main Office, Syracuse, N. Y., Branch Offices, 95 Broad St. New York, State St. Pier, Albany; Ocean Bar Dredging, River and Harbor Improvements, Filling and Reclaiming Lands, Railroad and Waterworks construction, A

Albany, N. Y., August 24, 1896.

Mr. O. M. Carter, Esq.,
Capt. of Engineers,
U. S. Engineers Office, Savannah, Ga.

Dear Sir:

We have the honor to request that you forward us specifi-

cations for the following work as per your advertisements: Improving Savannah Harbor, Ga., Jetties at Cumberland Sound, Ga., Dredging at Darien Harbor, Ga.

Very respectfully,

THE INTERNATIONAL CONTRACTING CO
By B. H. COFFEY.

509 Copy of letter C. S. 2, page 67.

"United States Engineer Office,
Savannah, Georgia, August 26, 1896.

The International Contracting Company,
State St. Pier, Albany, N. Y.,

Dear Sirs:

In compliance with request contained in your letter of the 24th instant, I transmit herewith, one full set of specifications for improving Cumberland Sound, Ga.

Very respectfully yours,

O. M. CARTER,
Capt. Corps Engineers, U. S. A.

(3 enclosures)
File No. G. R. 39, 1896.

Mechanical and Developing Company.
(Incorporated under the laws of the State of New York)
29-31 Liberty Street.
New York, August 27, 1896.

Mr. O. M. Carter,
Capt. U. S. Engineers,
Savannah, Ga.

Dear Sir:

Will you be so good as to mail a copy of the specifications for all work and blanks for bids advertised from your office to be opened September 8th, 1896, to Gen'l James E. Slaughter at Donaldsonville, La. at once on receipt of this, also a copy to this office.

I am respectfully,

B. B. WARD,
Per H.

510 Copy of letter C. S. 2, page 74.

"United States Engineer Office,
Savannah, Georgia, August 29, 1896.

Mechanical & Development Company,
New York.

Dear Sirs:

As requested, I send copies of specifications for work at

Cumberland to you and to General Slaughter. If you intend to bid on work please request additional copies.

Very respectfully,

O. M. CARTER,
Capt. Corps Engineers, U. S. A.

1 Enclosure,
1 to Gen'l S.
File No. G. R., 21, 1896.

G. H Breymann & Bro's.
Contractors for Public Works.
Dredging, Dock Building, Etc.,
Office—28 Summit Street.

Toledo, Ohio, August 12, 1896.

Capt. O. M. Carter,
U. S. Engineer's Corps,
Savannah, Ga.

Dear Sir:

We will esteem it a favor to have you place our name upon your mailing list that we may receive proposal blanks and such other information concerning work in your district as you may sent to contractors. The grant of such favor will greatly oblige,

Respectfully yours,

G. H. BREYMANN & BRO'S.

511 Copy of letter G. R., X-2, page 337.

"United States Engineer Office,
Savannah, Georgia, August 24, 1896.

Messrs. G. H. Breymann & Bros.,
No. 28 Summit St.,
Toledo, Ohio.

Dear Sirs:

In compliance with your request of the 12 instant, I transmit, herewith, one copy of specifications for constructing jetties at entrance to Cumberland Sound, Georgia. If, after reading these specifications, you intend to bid upon the work, please inform me and I shall send to you two more copies of the same.

Very respectfully yours,

O. M. CARTER,
Capt. Corps Engineers, U. S. A.

(One enclosure)

By a member: I move that we take a recess for 15 minutes.

The President: If there is no objection, court will take a recess for 15 minutes

Here the Court at 12.00 noon, took a recess of 15 minutes.

At 12.15 o'clock P. M., the Court assembled pursuant to recess.

Q. (By the Judge-Advocate) I notice that some of these letters from Captain Carter refer to one specification and some to a full set how many comprise a full set?

A. Three comprise a full set.

Q. Why are three necessary?

A. Because the papers have to be submitted in triplicate.

Q. Bids have to be submitted in triplicate?

A. In triplicate.

Here the Judge-Advocate continues to put in evidence the following papers, upon identification by the witness:

512 File No. G. R. 22, 1896.

R. G. Ross,
General Contractor,
River and Harbor Improvements
A Specialty.
Main Office: Jacksonville, Fla.

Jacksonville, Fla. August 19th, 1896.

Capt. O. M. Carter,
Corps of Engrs. U. S. A.,
Savannah, Ga.

Dear Sir:

Please send me all information with specifications, and other necessary papers, that will enable me to bid on the construction of jetties at Cumberland Sound, Ga. and the improvement of Harbor at Savannah, Ga., and oblige,

Yours very respectfully,

R. G. Ross.

Copy of letter G. R., X-2, page 336.

"United States Engineer Office,
Savannah, Georgia, August 24, 1896.

Mr. R. G. Ross,
Jacksonville, Fla.

Dear Sir:

In compliance with your request of the 19th instant, I transmit, herewith, one complete set of specifications for constructing jetties at entrance to Cumberland Sound, Georgia.

Very respectfully Yours,

O. M. Carter,
Capt. Corps Engineers, U. S. A.

(Three enclosures)

File No. G. R. 23, 1896.

Hydraulic Construction Company.

Hydraulic Engineers, Experts and Contractors.

Subterranean Water Supply, Hydraulic and Hydro-Pneumatic Caissons, Foundation Tests and Dtainage. Water 513 works constructed by franchise or contract. Branch Offices: Boston, Richmond. Detroit. (Caisson Department) 145 Broadway and 88 Liberty Street.

New York August 20th, 1896.

Captain O. M. Carter, U. S. A.,
Savannah, Ga.

Dear Sir: Kindly send us information in regard to dredging at Darien Harbor, Brunswick Harbor, etc., and also the improvement of Savannah Harbor and also for constructing jetties at Cumberland Sound, bids for which we understand, are to be oppened DSept., 8th, 1896.

Yours truly,
THE HYDRAULIC CONSTRUCTION COMPANY,
W. D. H. WASHINGTON,
President. E.

Copy of letter G. R., X-2, page 339.

"United States Engineer Office,
Savannah, Ga., August 24, 1896.

Mr. W. D'H. Washington,
President The Hydraulic Construction Company,
145 Broadway, New York, NY. Y.

Dear Sir:

In compliance with your request of the 20th instant, I transmit, herewith, one copy of specifications for constructing jetties at entrance to Cumberland Sound, Georgia. If, after reading yhese specification, you intend to bid upon the work, please inform me and I shall send to you two more copies of the same.

Very respectfully,
Yours,

O. M. CARTER,
Capt., Corps of Engineers.

(One Enclosure)

514 File No. G. R. 24, 1896.

J. Friday,
Contractor,
Cor. Neville and Bayard Sts. S. E.
Pittsburgh, Pa. Aug. 20, 1896.

Capt. O. M. Carter,
Corps of Engineers, U. S. A.,
Savannah, Ga.

Dear Sir:—

Please send me a full set of specifications, etc., necessary to make proposition on the two jobs as called for by the inclosed advertisement, and oblige,

Yours respectfully,

JACOB FRIDAY."

Judge-Advocate: The two advertisements referred to are pinned to the letter and are the advertisements calling for the harbor work at Savannah harbor and for constructing jetties at Cumberland Sound.

Copy of Letter, G. R. No. 2, page 345.

United States Engineer Office,
Savannah, Ga., Aug. 24, 1896.

Mr. Jacob Friday,
Pittsburgh, Pa.

Dear Sir:—

In compliance with your request of the 20th, inst., I transmit herewith one complete set of specifications for constructing jetties at entrance of Cumberland Sound, Georgia.

Very respectfully yours,

O. M. CARTER,
Capt. Corps of Engineers, U. S. A.

(3 enclosures.)

515 File No. G. R. 28, 1896.

Virginia Dredging Company,
819-1/2 East Main St.,
Richmond, Va. U. S., Aug, 21st, 1896.

Capt. O. M. Carter,
Corps of Engineers,
Capt.

I will request you to send me in triplicate specificications for dredging to be opened Sept. 8th, also specifications for improving harbor at Savannah and jetties Cumberland Sound.

Very Respectfully,

C. P. E. BURGWYN.

Copy of letter G. R., X-2, page 346.

"United States Engineer Office,
Savannah, Ga., August, 24, 1896.

Mr. C. P. E. Burgwyn,
President Virginia Dredging Company,
Richmond, Virginia.

Dear Sir:

In compliance with your request of the 21st instant, I transmit, herewith, one complete set of specifications for constructing jetties at entrance to Cumberland Sound, Georgia.

Very respectfully yours,
O. M. CARTER,
Capt. Corps of Engineers, U. S. A.

(3 enclosures)

File No. GO./R. 30, 1896.

Bryan & Patterson,
Municipal and Railroad Contractors,
Jacksonville, Fla. Aug, 22, 1896.

O. M. Carter, Esq.,
516 Capt. Corps of Engineers, U. S. A.,
Savannah.

Sir: Kindly gfavor us with copies of specifications and blank proposals for work to be let in accordance with your advertisements dated June 6th, 1896 in the Engineering News, as follows: Proposals for dredging in Darien Harbor, Brunswick Harbor and Inside water route between Savannah and Fernandina, Fla. Sealed proposals for improving Harbor of Savannah and proposals for constructing jetties at Cumberland Sound.

Yours very truly,
BRYAN AND PATTERSON.

Copy of letter G. R., X-2, page 341.

"United States Engineer Office,
Savannah, Ga., August 24, 1896.

Messrs. Bryan and Patterson,
Jacksonville, Fla.

Dear Sirs:

In compliance with your request of the 22nd instant, I transmit, herewith, one copy of specifications for constructing jetties at entrance to Cumberland Sound, Georgia.

If, after reading these specifications, you intend to bid

upon the work, please inform me and I shall send you two more copies of the same.

Very respectfully yours,

O. M. CARTER,
Capt. Corps of Engrs., U. S. A.

(One enclosure)
File No. G. R. 32, 1896.

Washington, D. C., August 22, 1896.

Captain O. M. Carter,
Dear sir:

Please send me specifications, and all information for 517 improving Harbor of Savannah, Georgia, and the jetties at Cumberland Sound, Georgia.

Yours respectfully,

JOHN J. SHIPMAN,
1310 Q N. W.

Copy of letter G. R., X-2, 1896, page 342.

"United States Engineer Office,
Savannah, Ga., August 24, 1896.

Mr. John J. Shipman,
1013 Q St., N. W.,
Washington, D. C.

Dear Sir:

In compliance with your request of the 22nd instant, I transmit, herewith, one copy of specifications for constructing jetties at entrance to Cumberland Sound, Georgia.

If, after reading these specifications, yo8 intend to bid upon the work, please inform me and I shall send you two more copies of the same.

Very respectfully yours,

O. M. CARTER,
Capt., Corps of Engrs., U. S. A.

(1 enclosure)
File No. G. R. 37, 1896.

Mobile, August 26, 1896.

Captain O. M. Carter,
Corps of Engineers, U. S. A.,
Savannah, Ga.

Dear Sir:

Please send us full sets for bidding specification and forms for improving harbor of Savannah, Georgia. Also for constructing jetties at Cumberland Sound, Georgia, and oblige,

Yours truly,

ALABAMA DREDGING & JETTY Co?,
By FRANK WARD,
Secty.

518 Copy of letter G. R., X-2, page 357.

"United States Engineer Office,
Savannah, Ga., August 28, 1896.

The Alabama Dredging and Jetty Co.,
Mobile, Ala.

Dear Sirs:

Referring to requests contained in your letters of the 26th instant, I have to inform you that specifications for you for improving Savannah Harbor, Georgia, Cumberland Sound, Georgia, and for dredging in Brunswick, Harbor, Darien Harbor, and along the Inside Water Route between Savannah, Georgia, and Fernandina, Florida, have already been sent to Tallulah Falls, Georgia.

Very respectfully yours,

O. M. CARTER,
Capt. Corps of Engrs., U. S. A."

File No. G. R. 25, 1896.

Established 1829.
P. Sanford Ross,
Contractor.
Docks, Bridges, Dredging and Harbor Improvements,
#116-1/2 Bryan Street,
Savannah, Ga. August 21st., 1896.

Captain O. M. Carter,
Corps of Engineers U. S. Army,
Savannah, Ga.

Dear Sir:

Will you please send me full sets of specifications for bidding on the following works to be let September 6th.,

Savannah Harbor, dredging and breakwater, and inland dredging to Beaufort. Dredging Darien Harbor, Brunswick Harbor and inland between Savannah and Fernandina,
519 Florida, and Jetty work Cumberland Sound, and oblige,

Yours truly,

CHAS. C. ELY.

Copy Letter, C. S. No. 2, Page 51.

"United States Engineer Office,
Savannah, Ga. August 24, 1896.

Mr. P. Sanford Ross,
Jersey City, New Jersey.

Dear Sir:—

In response to request made by your representative, here, Mr. Ely, I send you herewith three copies of specifications

for constructing jetties at entrance to Cumberland Sound, Georgia.

Very respectfully, yours,

O. M. CARTER,

Capt. Corps Engineers, U. S. A.

(three uncorrected copies.)

Q. (Judge-Advocate continuing examination), it has been suggested that you, in some instances, have read from the Inside Route Book instead of the Cumberland Sound Book?

A. I have got the Inside Route Book here. It is the General Register Book.

Q. Didn't the communications appear in the Cumberland Sound Book?

A. Some letters have been copied in the wrong book; that is where the trouble comes.

Here Judge-Advocate continues to put in evidence the following papers upon identification by the witness:

520 Copy of letter, G. R., X-2; page 347.

United States Engineer Office,

Savannah, Ga., August 24, 1896

"Mr. Edward H. Gaynor,
Pulaski House,
Savannah, Georgia.

"Dear Sir:

In compliance with your oral request of this day, I transmit herewith, one complete set of specifications for constructing jetties at entrance to Cumberland Sound, Georgia.

Very respectfully, yours,

O. M. CARTER,

Capt. Corps of Engrs. U. S. A."

(Three enclosures)"

Copy of letter C. S., 2, page 69.

"United States Engineer Office,

Savannah, Ga., August 26, 1896.

Mr. Jacob Paulsen,
President Savannah Dredging Company,
Savannah, Georgia.

"Dear Sir:

In response to your oral request of this day, I send you herewith one complete set of specifications for constructing jetties at entrance to Cumberland Sound, Georgia.

Very respectfully yours,

O. M. CARTER,

(Three enclosures)" *Capt. Corps of Engrs. U. S. A.*"

Copy of letter, C. S., 2, page 75
"The Stewart Contracting Company,
Savannah, Georgia.
"Dear Sirs:
In response to your oral request of this day, there are sent you herewith two more copies (making three in all) of specifications for improving Cumberland Sound, Georgia.
Very respectfully, yours.
O. M. CARTER,
Capt. Corps of Engrs. U. S. A.
(Two enclosures.)

521 Letter Book, C. S. No. 2, Page 79.
United States Engineer Office,
Savannah, Ga., Sept. 2, 1896.
Mr. Friday,
Savannah, Ga.
Dear Sir:—
In compliance with your oral request, I hand you one copy of the specifications for Improving Cumberland Sound, Ga.
Very respectfully,
O. M. CARTER,
Capt. Corps Engrs. U. S. A.
(1 enclosure)

Letter Book, C. S. No. 2, Page 82.
United States Engineer Office,
Savannah, Ga., Sept. 3, 1896.
Mr. Blair Burwell,
Savannah, Ga.
Dear Sir:—
In compliance with your oral request, I hand you one copy of the specifications for constructing jetties at Cumberland Sound, Ga.
Very respectfully yours,
O. M. CARTER,
Capt. Corps Engrs. U. S. A.

Letter Book C. S. No. 2, Page 85.
United States Engineer Office,
Savannah, Ga., Sept. 4, 1896.
Mr. W. H. Venable,
Atlanta, Ga.
Dear Sir:—
In compliance with your oral request of this day, I send

you herewith one complete set of specifications for im-
522 proving Cumberland Sound, Georgia.

Very respectfully, yours,

O. M. CARTER,
Capt. Corps of Engrs. U. S. A.

(3 enclosures.)
Letter Book, C. S. No. 2, Page 87.

United States Engineer Office,
Savannah, Ga. September 7, 1896.

Mr. James Foley,
Savannah, Ga.

Dear Sir:—

In compliance with your oral request of this day, I send to you herewith one copy of specifications for construction of jetties at entrance to Cumberland Sound, Georgia. If after reading these specifications over, you will bid upon the work, please inform me, and I shall take pleasure in sending you two more copies of these specifications; but if you decide not to bid upon the work, please return to me the within enclosures.

Very respectfully yours,

O. M. CARTER,
Capt. Corps of Engrs. U. S. A.

(one enclosure)
Letter Book No. 2, C. S. Page 88.

United States Engineer Office,
Savannah, Ga. Sept. 8, 1896.

Mr. Rittenhouse R. Moore,
Savannah, Ga.

Dear Sir:—

In compliance with your oral request of this day, I send you herewith one copy of specifications for constructing jetties at entrance to Cumberland Sound, Georgia, to re-
523 place copy destroyed by you.

Very respectfully, yours,

O. M. CARTER,
Capt. Corps of Engrs. U. S. A.

(One enclosure.)

Letter Book, S. H. No. 4, Page 199.

United States Engineer Office,
Savannah, Ga., September 4, 1896

Messrs McAlpin & Schley,
Savannah, Georgia.

Dear Sirs:—

In compliance with your oral request of this day, there is sent you herewith, one copy of specifications for improving Cumberland Sound, Georgia. Should you, after reading these specifications, desire to bid upon the same work, I shall take pleasure in sending you two more copies of the specifications.

Very respectfully, yours,

O. M. CARTER,
Capt. Corps of Engrs. U. S. A.

(One enclosure)

Judge Advocate:— May it please the Court, these are papers that were identified by the clerk from the engineer's office, Washington, as original papers, or some of the papers.

The Court:— Properly certified to?

Judge Advocate:— Testified to. I now offer in evidence and read;

"Subject: Proposals Improving Cumberland Sound, Georgia.

United States Engineer Office,
Savannah, Ga. Sept. 8, 1896.

Brig. Gen. Wm. P. Craighill,
Chief of Engineers, U. S. A.
Washington, D. C.

524 "General:

I have the honor to transmit herewith all proposals received this day for Improving Cumberland Sound, Ga., and request authority to award the contract to the Atlantic Contracting Company, of New York, N. Y., John F. Gaynor, Pres., this Company being the lowest responsible bidder, the prices being considered satisfactory and reasonable. An abstract of the proposals is transmitted herewith.

Very respectfully,
Your obedient servant,

O. M. CARTER,
Capt. Corps of Engrs. U. S. A.

(Four enclosures)'

Judge-Advocate: I also offer in that connection, and read, "Abstract of Bids opened at Savannah, Ga., September 8th,

1896, by Capt. O. M. Carter, Corps of Engineers, U. S. Army, for constructing jetties at en entrance to Cumberland Sound, Ga." First column, "No"; next column, Name and Address of Bidder; next column "Mattress, 200,000 square yards, price, amount"; next column, "First Class Stone, 50,000 tons, price, amount"; next column, "Second Class Stone, 75,000 tons, Price, Amount"; next column, "Third Class Stone, 100,000 cubic yards, Price, Amount"; next column "Fourth Class Stone, 250.000 cubic yards, Price, Amount"; next column, "Total." 1. The Atlantic Contractingg Co., John F. Gaynor, President, New York, N. Y., Price $1.10, Amount $220.000; 2. Jacob Friday and Sons, Pittsburgh, Pa., Price $1.12, Amount $224,000; 3. John Grim, Philadelphia, Pa., Price $1.15, Amount $230,000. First Class Stone, price bid by the Atlantic Contracting Co. $5.25, amount $262,500; price bid by Jacob Friday & Sons, Pittsburg, Pa., $5.00, amount, $250,000; price bid by John Grim, Philadelphia, Pa., $5.20, amount $260,000. Second class stone, price bid by the Atlantic Contracting Company, $5.25, amount, $393,750; price bid by Jacob Friday & Sons, $5. amount $375,000; price bid by John Grim, $5.20, amount, $390,000. Third class
525 stone, price bid by the Atlantic Contracting Company, $3.90, amount, $390,000; price bid by Jacob Friday & Sons, $4.50, amount $450,000; price bid by John Grim, Philadelphia, Pa., price, $3.90, amount, $390,000. Fourth class stone, price bid by the Atlantic Contracting Company, $3.50, amount, $875,000; price bid by Jacob Friday & Sons, $3.40, amount, $850,000; price bid by John Grim, $3.55, amount, $887,500. Making the aggregate bid of the three different bidders carry out in the total column, from the Atlantic Contracting Company, $2,141,250; from Jacob Friday & Sons, $2,149,000; from John Grim, $2,157,500. "Remarks: Amount for which the Secretary of War is authorized to enter into contract, $2,350,000". Asterisk against the Atlantic Contracting Company, John F. Gaynor, Pres. New York, N. Y., and has a foot-note, "Bid recommended for acceptance, that Company being the lowest responsible bidder for the best and most satisfactory materials and service." There is also a note made under the head of Jacob Friday & Sons, marked with two asterisks,—"Justification of guarantors omitted." Signed, "O. M. Carter, Capt. Corps of Engineers, U. S. A., Savannah, Ga., Sept. 8, 1896."

Judge Advocate: I submit in evidence the three bids made by the parties whose names appear in the abstract just

read, copies of which will be attached to the record marked, Exhibits 14, 15 and 16. Copy of abstract read by me will be attached, marked Exhibit No. 17.

Q. (Judge Advocate continuing examination) I think I asked you if all these documents and books that you have brought here, and from which I have read, or from which you have read, or referred to here, are the official papers and records from the office of the engineer of this district?

A. Yes, sir.

Q. Now, as to the appropriation for the improvement of Savannah harbor, which I read from the Act of Con-
526 gress this morning,—that became law the same date as that for the improvement of Cumberland Sound, and now, as to the time for calling for projects of expenditure, was that project called for for Savannah harbor, as well as Cumberland Sound, at the same time?

A. Yes, sir; it was.

Q. And was the project submitted in a communication bearing the same date?

A. Will you please repeat the question?

Q. Was the project of expenditure,—was the date of the letter calling for the project of expenditure of the same date for Savannah harbor as for Cumberland sound?

A. Yes, sir.

Q. It was one communcation?

A. One communication.

Q. The letter submitting project of Savannah harbor, was that in the same communication as for Cumberland sound?

A. No, sir; separate.

Q. Look at letter book, S. H. No. 4, page 123.

A. (Witness identified copy of letter in letter book and handed the book to the Judge Advocate).

Judge Advocate: I offer in evidence and read this letter which is as follows:—

"SUBJECT: Project of Expenditure, Savannah Harbor, Savannah.

United States Engineer Office,
Savannah, Ga., June 22, 1896.

"Brig. Gen. Wm. P. Craighill,
Chief of Engineers, U. S. Army,
Washington, D. C.

(Through Col. Peter C. Hains,
Corps of Engineers, U. S. Army,
Division Engineer, Southeast Division,
Baltimore, Maryland.)

527 General:

In compliance with your letter of instructions of the 19th instant, I have the honor to submit the following project for the expenditure of $5,000, appropriated by Act of Congress, of June 3, 1896, for "Harbor of Savannah, Ga.: Continuing Improvements."

The Act referred to provides further: "That contracts may be entered into by the Secretary of War for such materials and work as may be necessary to complete the project of further improvement, recommended by Capt. O. M. Carter, in his reports of Dec. seventh, eighteen hundred and ninety-four and July first, eighteen hundred and ninety-five, and to complete the project for the steamboat channel between Beaufort, S. C., and Savannah, Ga., recommended by Capt. O. M. Carter in his report of Dec. fourth, eighteen hundred and ninety-five, and mentioned in that report as Route 2; to be paid for as appropriations may from time to time be made by law, not to exceed the amount of one million dollars, exclusive of amount herein or heretofore appropriated."

"The projects referred to in this Act contemplate (1) the extension of the Coxspur or Oyster Bed training wall, (2) the construction of a detached portion of the latter for the purpose of sheltering the anchorage in Tybee Roads and protecting the channel, (3) The maintenance of the existing channel, depth in the harbor, and (4) the opening of a steamboat channel 7 feet deep at mean low water between Savannah, Ga., and Beaufort, S. C., which latter is to be accomplished by connecting dam No. 31 with Turtle Island and by dredging in Ramshorn Creek at the mouth of Wrights River.

"The cost of the above work was estimated at $1,148,950, provided all operations were completed by July 1, 1897, and that a sum greater by $50,000 for each year thereafter re-

quired for the completion of the work. The Act of June 3, 1896, which provided that the Secretary of War shall not obligate the Government to pay more than $400,000 in any
528 one fiscal year, increases the necessary cost of the improvement to $1,248,950, which is $243,950 more than the total sum for which the Secretary of War is authorized to enter into contract.

"The locality is well worthy of the improvement contemplated by the authorized projects, but the limit of cost should be extended to that required for completion.

"No work has ever been done by the United States on the inside route between Savannah, Georgia, and Beaufort, South Carolina.

"The condition of the improvement in Savannah Harbor is given in detail in my last annual report.

"Work under the existing contract in Savannah Harbor will be completed about July 15, 1896, and the balance available, which will be about $15,000, together with the $5,000 made available by the Act of June 3, 1896, will be required for engineering and contingencies.

"The United States owns no suitable plant for executing the work and any work done should be done by contract, as provided in the Act of June 3, 1896, that method being most economical and advantageous to the Government.

"All work should be done according to the projects approved by that Act, which are given in my reports of December 7, 1894, February 4, 1895, and July 1, 1895, to which I respectfully refer for details.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. Corps of Engrs. U. S. A."

Q. Have you that original letter among your papers?
A. No, sir, I have not.
Q. It was never returned with any indorsement so far as the records of your office show?
529 A. No, sir.
Q. Give me S. H. No. 49, 1896.
A. (Witness handed Judge-Advocate the paper).
Judge-Advocate: I offer this paper in evidence, and read it as follows:

"Subject: Savannah Harbor, Ga.
Office of the Chief of Engineers,
United States Army,
Washington, D. C., Aug. 11, 1896.

Capt. O. M. Carter,
Corps of Engineers,
Savannah, Ga.

Captain:

Your letter of June 22, last, submitting project for expenditure of appropriation made by the river and harbor act of June 3, 1896, for Harbor at Savannah, Ga., was duly received and submitted to the Secretary of War with indorsement of which the following is a copy:

'2d indorsement.
Office of Chief of Engineers,
U. S. Army,
August 3, 1896.

Respectfully submitted to the Secretary of War.

The river and harbor act of June 3, 1896, in the item appropriating $5,000 for continuing improvement of harbor at Savannah, Ga., provides:

"That contracts may be entered into by the Secretary of War for such materials and work as may be necessary to complete the project of further improvement recommended by Captain O. M. Carter in his reports of December seventh, eighteen hundred and ninety-four, and July first, eighteen hundred and ninety-five, and to complete the project for the steam-boat channel between Beaufort, South Carolina, and Savannah, Georgia, recommended by Captain O. M. Carter in his report of December fourth, eighteen hundred and ninety-five, and mentioned in that report as route two; to be paid for as appropriations may from time to time be made by law, not to exceed the amount of one million dollars, exclusive of amount herein or heretofore appropriated.'

'This provision of the act is based upon reports submitted by Captain O. M. Carter, Corps of Engineers, and printed in the Annual Report of the Chief of Engineers for 1895, pp. 1449-1462 and 1521-1525.

The project formerly adopted by Congress for the improvement of Savannah Harbor, has been successfully completed under the continuous contract system, and the conditions are now favorable for letting the contracts for the work authorized by the act of June 3, 1896, on terms advantageous to the Government.

It appears that the interest of commerce and economical work, and the necessity of protecting existing depths in the harbor, alike requires that arrangements should be made as early as practicable for carrying on the work authorized. I, therefore, recommend that contracts be entered into for the completion of the work, in accordance with the provisions of the act above quoted, and the regulations of the department.

Under terms of section 5 of the act, the Secretary of War can not obligate the Government to pay more than $400,000 on this work in any fiscal year, beginning July, 1897.

A. MACKENZIE,
Acting Chief of Engineers.'

The project was returned to this office by War Department indorsement of August 6, "Approved as recommended by the Acting Chief of Engineers in the preceding indorsement hereon."

Very respectfully, your obedient servant,

A. MACKENZIE,
Acting Chief of Engineers.

Through Col. Peter C. Hains,
Corps of Engineers, Div. Engineer, Southeast Division.

531 "Rec'd Engr's Office, Balto., August 12, 1896," and in U. S. Engineer Office, Savannah, Ga., Received August 14, 1896."

Q. Give me S. H. 29, 1896.

A. (Witness hands Judge-Advocate paper).

Q. I will ask you if the specifications were submitted with the request to advertise with the same communication for Savannah Harbor as for Cumberland Sound?

A. No, sir.

Q. I would like to see then the date of the communication submitting the specifications and request to advertise for the improvement of Savannah Harbor?

A. That is marked S. H. 29, 1896.

Judge-Advocate: You are right. I read the Savannah Harbor instead of Cumberland Sound.

Q. (Handing witness paper). How is that marked?

A. C. S. 5, 1896.

Judge-Advocate: I will state to the Court that I read the request for authority to advertise for the improvement of Savannah Harbor while examining the subject of Cumberland Sound, and that is already in evidence as applicable to the pending examination; so it will be necessary for me now to

read the application which should have been read with the Cumberland Sound papers, and I offer it in evidence.

(Reading)

"Subject:—Advertisement, Specifications, etc., improving Cumberland Sound.

United States Engineer Office,
Savannah, Ga., June 4, 1896.

The Chief Clerk of the War Department,
Washington, D. C.

(Through Brig. Gen. Wm. P. Craighill, Chief of Engineers,
U. S. A., Washington, D. C., and Col. Peter C. Hains,
532 Corps of Engineers, U. S. A., Division Engineer, South-
east Division, Baltimore, Maryland.)

Sir:—

I inclose herewith a copy of an advertisement inviting proposals for constructing jetties in Cumberland Sound, Ga., and request authority to publish the same in the following official newspapers:

6 insertions in Morning News, Savannah, Ga.;
6 insertions in the Florida Citizen, Jacksonville, Fla.;
3 insertions in Marine Journal, New York, N. Y.;
3 insertions in Engineering News, New York, N. Y.;
3 insertions in Engineering and Building Record, New York, N. Y.

I also request authority to print 300 copies of the accompanying specifications.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. Corps of Engineers, U. S. A.

Indorsed; Savannah, Ga., June 4, 1896, Capt. O. M. Carter, to C. C. W. D. Enclose copy of advertisement inviting proposals for constructing jetties in Cumberland Sound, Ga., and requests authority to publish same in certain official newspapers. Also requests authority to print 300 copies of accompanying specifications.

1st indorsement, U. S. Engineer Office,
9 Pleasant Street,
Baltimore, Md.
June 6, 1896.

Respectfully submitted to the Chief of Engineers. I have no official information that the work contemplated is provided for by law, or that a project for the expenditure has

been approved. The specifications, however, are defective in the following particlars.

533 1. On the 4th, page there is printed matter evidently intended to be stricken out, but has been overlooked.

2. On the next page (5)—description of third design—at line 14, something has been omitted and must be inserted to make sense. The whole paragraph seems to be duplicated in part, and confused.

3. Par. 44 (Prices) page 8, does not accord with form of proposal on page 12. In one case the price is stated to be 'a price per cubic yard for third class stone' and in the other, 'for third class stone——dollars and——cents ($.....) per ton of 2,000 pounds'. In my judgment both third and fourth class stone should be bid for by the ton and not by the cubic yard, as well as the first and second classes.

4. Par. 44 has an evident error on third line, tons meaning pounds.

I submit these papers to the Chief of Engineers at the request of Capt. Carter, who has informed me that he expects to be in Washington on Monday, June 8th, and wishes to see the Chief of Engineers in regard to them.

Peter C. Hains,
Col. Corps of Engrs., U. S. A.
Div. Engineer, S. E. Division.

2d Indorsement.

Office Chief of Engineers,
U. S. Army, June 10, 1896.

Respectfully returned to Captain Carter for revision, attention being invited to the foregoing indorsements.

To be returned through Division Engineer.

By command of Brig. Gen. Craighill,

A. MacKenzie,
Lieut. Col. Corps of Engrs.

15551.

Inclos. 1 and 2 accompanying.

534 3rd Indorsement.

U. S. Engineer Office.

Savannah, Ga.,
June 12, 1896.

Respectfully returned to the Chief of Engineers, U. S. A. (Through Col. Peter C. Hains, Corps of Engineers, U. S. A. Division Engineer, Southeast Division, Baltimore, Md.)

1. On the fourth page is a clerical error; the printed matter should have been stricken out.
2. The paragraph is confused on account of a clerical error; this has been corrected.
3. The clerical error has been corrected. It is advantageous that third class and fourth class stone should be received by the cubic yard, since it is desired to make use of much ballast rock.
4. The word 'tons' should have been 'pounds' and the correction is made.

O. M. CARTER,
Capt. Corps of Engrs., U. S. A.

(2 enclosures returned.)

4th Indorsement.
U. S. Engineer Office,
9 Pleasant St.,
Baltimore, Md., June 15, 1896.

Respectfully submitted to the Chief of Engineers. These papers seem now to be all right, but as stated in the first indorsement, I have no official knowledge of the appropriation having been made, and no project for the expenditure has yet passed through this office, or been approved.

PETER C. HAINS,
Col. Corps of Engineers, U. S. A.
Div. Engineer, S. E. Division.

535 Received Office Chief of Engineers, June 16, 1896.

5th Indorsement.
Office Chief of Engineers, U. S. A.
Aug. 15, 1896.

Respectfully forwarded to the Chief Clerk of the War Department, with recommendation that the authority within asked for be granted. Amendment to the specifications has been made by this office.

A. MACKENZIE, *Act. Chief of Engineers.*

15551. Inclos. 1 and 2 accompanying.
Received War Department, Aug. 15, 1896.
Authority No. 2239, T. B. N.

6th Indorsement.

Approved, War Department, Aug. 15, 1896.
DANIEL S. LAMONT, *Sect. War,*
J. S.

5 inclos. Received Office Chief of Engrs., Aug. 15, 1896.

7th Indorsement.
Office Chief of Engineers,
U. S. Army, Aug. 15, 1896.

Respectfully returned to Capt. Carter, inviting attention to the foregoing indorsements.

A. MacKenzie,
Act. Chief of Engrs.

15551.
Inclos. 1 and 2 accompanying.
(5 Inclosures)
Through Col. Peter C. Hains, Corps of Engineers, Div. Engineer, S. E. Division.

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536 8th Indorsement.
U. S. Engineer Office,
Savannah, Ga., Oct. 20, 1896.

Respectfully returned to the Chief Clerk of the War Department, Washington, D. C., with the following bills and vouchers in duplicate:

Savannah Morning News, $4.80; Jacksonville, Florida Citizen, $2.62; Engineering News Pub. Co., $3.60; Marine Journal Co., New York, $5.25; Engineering Record, New York, $4.20; John C. Rankin Co., New York, $62.00. There are also forwarded herewith two slips of advertisements for file and one sample of job printing.

O. M. Carter,
Capt. Corps of Engrs. U. S. A.

(15 enclosures)

Received War Department Oct. 22, 1896.

9th Indorsement.
War Department, Nov. 7, 1896.

Accounts Nos. 1 to 4, having been audited, are respectfully returned for payment.

Account, No. 5, in favor of the New York Engineering Record, is returned for correction, the voucher stating that the advertisement was published in the New York Engineering News. Attention is invited to the number of insertions charged and ordered. Authority was granted to publish the advertisement for three insertions in the New York Engineering Record, and the publishers' original bill states that

it was published three times. Voucher gives the number of insertions charged as two; ordered two.

By order of the Sect.'y of War,

JOHN TWEEDDALE,
Chief Clerk.

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537 10th Indorsement,

U. S. Engineer Office,
Savannah, Ga., Nov. 9, 1896.

Respectfully returned to the Chief Clerk of the War Department, Washington, D. C.

Correct vouchers are transmitted, which please substitute for those in which errors occur.

O. M. CARTER,
Capt. Corps of Engineers, U. S. A.

(4 inclosures)

Received War Department Nov. 12, 1896.

11th Indorsement.

Audited and respectfully returned for payment,

War Department,
Nov. 12, 1896.

Received back U. S. Engineer Office, Savannah, Ga., Nov. 14, 1896.

Q. The seventh indorsement states that this communication was returned to Capt. Carter through Col. Peter C. Hains. It has no such action upon it, and the eighth indorsement is by Capt. Carter under date of Oct. 20, 1896?

A. Received back U. S. Engineer Office, Savannah, Ga., Aug. 22, 1896, and afterwards Nov. 9, 1896.

Q. The receipt of Nov. 9, 1896, had reference to the payment of bills for advertising?

A. To the bills.

Judge Advocate: I called the attention of the Court to the fact that telegrams were produced by this witness as the proper custodian, (Reading) "Washington, D. C., August 15, 1896. To Connolly, U. S. Engrs. Office, Savannah, Ga. Advertise all work Fernandina, Savannah and inside route to be opened Tuesday, Sept. eighth. No change in list of papers.

I have specifications. Carter, Engrs."; and from New
538 York, same date, "To Connolly, U. S. Engineer's Office, Savannah, Ga. Date all advertisements June sixth, but all will be opened September eighth. Carter. Engr."

They are all in evidence before the Court.

Q. Now, I come back to the communication in relation to Savannah Harbor, which was by mistake read while in considering Cumberland Sound project. What came with that (Handing paper to witness)?

A. With this communication in this specification and advertisement.

Q. That is not the original that came?

A. This is the original which was sent from Washington and which came from Washington, which is changed,—certain modifications were made in Washington.

Q. And from that was prepared matter for printing of specifications?

A. From the duplicate of that.

Q. The printing was from a duplicate?

A. A copy like this. Capt. Carter handed me a copy of this and that copy I gave to the printer.

Q. The duplicates then were returned?

A. Yes, sir, and when this original came I compared the Printer's copy and made alterations on the printer's copy from that.

Q. This then was the basis for final proof?

A. Yes, sir, for the second proof.

Q. That was received at the same time that the authority by you—that was sent first to you?

A. Yes, sir.

Q. Your testimony in regard to that, as to your meeting Capt. Carter, covers these specifications, as it did the specifications in relation to the improvement of Cumberland Sound?

A. Yes, sir.

Q. They were both considered together?

539 A. At the same time?

Q. You received the same instructions in regard to this that you did in regard to the other specifications?

A. Except as to notifying Capt. Green. I notified him that the project had been approved without referring to any particular work.

Q. Just generally?

A. Generally.

Q. Were these specifications calling for Savannah Harbor improvements received from the printer at the same time as those for Cumberland Sound?

A. They were to be delivered at the same time. Whether

they were delivered at the same time, I don't know; I didn't see them delivered.

Q. Do you know when the specifications for Savannah Harbor improvement were received, or when they were accessible to bidders?

A. The records show they were accessible to bidders August 24th; the first specifications were sent out on that date.

Q. The advertisement bore date of June 6th?

A. Yes, sir.

Q. That had not been changed?

A. No, sir.

Q. Bids were to be opened September 8th?

A. Yes, sir.

Q. I will ask you now to produce applications as I call them, and it may be that some of the applications have already been read. File mark, S. H. 50—

Mr. Blair:—If the Court please, I see that the Judge Advocate has a list of Savannah Harbor applicants, similar to the one he had for Cumberland Sound. It contains the name of the applicant for specification, the date he applied, the date specifications were sent to him, and the number sent, In other words,—the information contained in these letters, which were read at length. I suggest that that might be put right into the record, subject to our verification and it will save the reading of these letters. It seems to me that is all the information the Judge Advocate needs in that connection. It took us two hours and a half to go over that other list, and this is about as long; otherwise, we have no objection.

Judge Advocate: I will read, upon the admission of counsel, with however, one point omitted by him; that is, the place of residence. This is a compilation of the names of applicants for copies of specifications, Savannah Harbor improvement, giving their names, place of residence, date of their application, file mark received, number of copies sent, date of letter of Capt. Carter and the page in letter book on which Capt. Carter's letter was copied.

C. W. Johnston, Boston, date of application, Aug. 24, 1896, file mark, S. H. 50, reply sent. Aug. 26, 1896, Page 180, with 3 copies of specifications.

J. M. Ferguson, Sabine Pass, date of application Aug. 27, 1896, file mark, S. H. 52, reply, inclosing 3 copies, sent Aug. 29, 1896, copy book, S. H. Pahe 188.

Saluda Quarries, Columbia, S. C., application without date, file mark, S. H. 53, reply of Aug. 31, 1896, inclosing one copy, copy book, S. H. Page 193.

Sanford & Brooks, Baltimore, date of application Aug. 28, 1896, file mark, S. H. 54, reply sent Aug. 31, 1896, inclosing three copies, copy book S. H. page 192.

I. H. Hathaway, Philadelphia, date of application Aug. 28, 1896, file S. H. 55, reply sent Aug. 31, 1896, inclosing three copies, S. H. 190.

F. Behrend, New York, date of application Aug. 30, 1896, file mark, S. H. 56, reply sent Sept. 2, 1896, inclosing one copy, S. H. 195.

541 American Dredging Co. Philadelphia, date of application Aug. 31, 1896, file mark, S. H. 57, reply sent Sept. 2, 1896, inclosing three copies, letter book, S. H. 197.

G. H. Breymann & Bros., Toledo, Ohio, date of application Aug. 12, 1896, file G. R. 21, reply sent Aug. 24, 1896, inclosing one copy, letter book S. H., 169.

R. G. Ross, Jacksonville, date of application Aug. 19, 1896, file mark, G. R. 22, reply sent Aug. 24, 1896, inclosing three copies, letter book, S. H. 175.

Hydraulic Construction Company, New York, date of application Aug. 20, 1896, file G. R. 23, reply sent Aug. 24, 1896, one copy, letter book S. H. 167.

Jacob Friday, Pittsburgh, Pa. date of application Aug. 20, 1896, file mark, G. R. 24, reply sent Aug. 24, 1896, three copies, letter book, S. H. 172.

P. Sanford Ross (Chas. C. Ely) Savannah, date of application Aug. 21, 1896, G. R. 25, reply sent Aug. 24, 1896, three copies, letter book, S. H. 162;

New York Dredging Co. New York, date of application Aug. 21, 1896, file G. R. 26, reply sent Aug. 24, 1896, three copies letter book, S. H. 171;

Morris & Cummings, Dredging Co. New York, Aug. 21, 1896, G. R. 27, reply sent Aug. 24, 1896, three copies, letter book, S. H. 174;

Virginia Dredging Co., C. P. E. Burgwynn, Richmond, Aug. 21, 1896, file G. R. 28, reply sent Aug. 24, 1896, three copies, letter book, S. H. 176;

Will R. Maher, Atlanta, Ga., Aug. 22, 1896, file G. R. 29, reply sent Aug. 24, 1896, one copy, letter book, S. H. 168;

Bryan & Patterson, Jacksonville, Fla., Aug. 22, 1896, file G. R. 30, reply sent Aug. 24, 1896, one copy, letter book, S. H. 166;

Rittenhouse R. Moore, Tallulah Falls, Aug. 22, 1896,
542 file G. R. 31, reply sent Aug. 24, 1896, three copies, letter book, S. H. 173;

John J. Shipman, Washington, Aug. 22, 1896. G. R. 32, reply sent Aug. 24, 1896, one copy, letter book, S. H. 165;

International Construction Co. Albany, N. Y., Aug. 24, 1896, file G. R., 33, reply sent Aug. 26, 1896, three copies, letter book, S. H., 182;

William Johnson & Co., Charleston, Aug. 25, 1896, file G. R. 34, reply sent Aug. 27, 1896, three copies, letter book, S. H., 185;

Charles S. Day, Jersey City, Aug. 25, 1896, G. R., 35, (Telegr.) reply sent Aug. 26, 1896, three copies, letter book, S. H., 181;

Henry Wilson, Washington, Aug. 26, 1896, file G. R., 36, reply sent Aug. 27, 1896, three copies, S. H., 186;

Alabama Dredging and Jetty Co., Mobile, Aug. 26, 1896, G. R., 37 (reply sent Aug. 28, 1896, informing that copies had been sent to R. R. Moore, G. R., Page 357;

Mechanical & Development Co., New York, Aug. 27, 1896, file G. R., 39, reply sent Aug. 29, 1896, one copy, S. H., 187;

John L. Grim, Philadelphia, Aug. 28, 1896, G. R., 40, reply sent Aug. 31, 1896, three copies, also one copy to Gen. James E. Slaughter, Donaldsonville, Ky., S. H., 191;

R. A. Johnson, Augusta, Ga., (through Barrow & Osborne) G. R. 42, reply sent Sept. 4, 1896, one copy, S. H., 200;

Oral Requests:

Edward H. Gaynor, Savannah, Aug. 24, 1896, reply sent Aug. 24, 1896, three copies, S. H., 170;

Savannah Dredging J. Paulsen. Savannah. Aug. 26, 1896, reply sent Aug. 26, 1896, three copies, S. H., 184;

Cordes & Bochmann, Charleston, Aug. 29, 1896, reply sent Aug. 29, 1896, three copies, S. H., 189;

543 Stewart Constructing Co., Savannah, Aug. 29, 1896, reply sent Aug. 31, 1896, three copies, S. H., 194;

Friday, Savannah, Sept. 2, 1896, reply sent Sept. 2, 1896, one copy, S. H., 196;

W. H. Venable, Atlanta, Sept. 4, 1896, reply sent Sept. 4, 1896, three copies, S. H., 198;

James Foley, Savannah, Sept. 7, 1896, reply sent Sept. 7, 1896, inclosing one copy, S. H., 201;

Mr. Rose (Addressing the Judge-Advocate) Will you kindly state how many three copies were sent to and how many one copy was sent to?

Judge-Advocate: Seventeen of those who made written application, and five of those who were here present and made personal applications, received full sets. Then who made written applications, received one copy of the specifications and two who made personal application, received one copy of the specifications. There is a further entry that of these bidders the American Dredging Company, the Virginia Dredging Company (C. P. E. Burgwynn) and Rittenhouse R. Moore and the Savannah Dredging Company were bidders for dredging.

Mr. Rose:—Will you be kind enough to give me the same information as to your other list,—how many there were?

Judge-Advocate:—In relation to Cumberland Sound there were thirteen who made written applications and received three copies of the specifications; twelve who made written application, received one copy of the specifications. One of these parties, however, appears on a subsequent date to have received two additional copies, a week after the first copy was sent him. A copy was sent him Aug. 24, 1896, and on Aug. 31, 1896 two more were sent to him. Of those who made oral requests here in Savannah, there were five who received a full set of the specifications—three copies, and four who received but one copy.

544 Judge-Advocate:—Mr. President, I am pretty well used up and I think the reporters will be before tomorrow morning, with the amount of material I have given them—

Mr. Blair:—Before the Court adjourns, we would, on behalf of the accused, like to have permission from the Court, by our experts to examine those two charts introduced yesterday of Cumberland Sound. I presume they are now in the custody of the Court, having been offered in evidence, and that it is necessary to have the permission of the Court to examine them.

Judge-Advocate:—I think the defense is entitled to it.

The Court:—I know of no objection.

A Member of the Court:—I move that we adjourn until tomorrow morning, at 11 o'clock.

The Court: If there is no objection, the Court stands adjourned until tomorrow morning at 11 o'clock A. M.

(Here at 2 o'clock, P. M. the Court adjourned to meet on January 26, 1898, at 11 o'clock, P. M.)

THOMAS F. BARR
Col. & Asst. Judge Adv. Genl
Judge Advocate.

545 United States Court Room,
Savannah, Georgia, January 26, 1898.

Court met pursuant to adjournment at 11.00 o'clock to-day.

Present:

All the members of the court, and the Judge-Advocate
The accused, his counsel, and the reporter were also present.

The President: The court will come to order. All present.

J. W. O. STERLY, a witness for the prosecution, having been previously sworn, continues to testify as follows:

Judge-Advocate: These are the proposals, gentlemen, in regard to Cumberland Sound. I offer now in evidence. the proposals for the improvement of Savannah Harbor, in regard to which the edamination was going on at the close of the court session. I read, first; the following as a part of my offer:

"Subject: Proposals, Improving Hrbor at Savannah, Georgia.

United States Engineer Office.
River and Harbor Improvements and Fortifications in Georgia and North-Eastern Florida.
Savannah, Ga., September 8, 1896.

Brig.-Gen. Wm. P. Craighill,
Chief of Engineers, U. S. A.,
Washington, D. C.

General:

I have the honor to transmit all proposals received this day for Improving Harbor at Savannah, Georgia, and request authority to award the contract for jetty work to The Atlantic Contracting Company of New York, N. Y., John F. Gaynor, Pres., the lowest rates for jetty work, and that for dredging to Rittenhouse R. Moore of Mobile, Ala., the lowest rates for dredging, the prices in each case being considered satisfactory and reasonable. An abstract of the proposals is transmitted herewith.

Very respectfully, your obedient servant,
O. M. Carter,
Capt. Corps of Engrs. U. S. A.,

(8 enclosures)

546 The President: Does that purport to be an original, or second copy?

Judge-Advocate: That is the original, and as it is spread upon the record I will not have to attach it.

Judge-Advocate: These are all originals which have been identified before.

The President: The abstract also?

Judge-Advocate: This is the abstract I shall later submit the contracts, that is, the proposals.

"Abstract of bids opened at Savannah, Georgia, September 8, 1896, by Captain O. M. Carter, Corps of Engineers, U. S. Army, for Improving Harbor at Savannah, Georgia." (The heads of the columns will be described as follows: The first is for the number, next name and address of bidder; next mattresses, 200,000 square yards, price, amount; the next column is first class stone, 25,000 tons, price, amount; the next column is second-class stone, 25,000 tons, price, amount; the next column is third class stone, 50,000 cubic yards, price, amount; the next column is fourth class stone, 100,000 cubic yards, price, amount; the next column is total for jetty work; the next column is dredging, 1,250,000 cubic yards, price, amount.) No. 1, Virginia Dredging Company, J. Clements Shafer, Secretary and Treasurer, Richmond, Virginia, bids on dredging, price 16-9/10c, amount $211,600.00.

No. 2, P. Sanford Ross, Jersey City, New Jersey; for mattresses, bids 90c per square yard, amount $180,000.00; first class stone, 25,000 tons, price $4.80, amount $120,000.00; Second class stone, 25,000 tons, price $4.80, amount $120,000.00; third class stone, 50,000 cubic yards; price $3.55, amount $177,500.00; fourth class stone, 100,000 cubic yards; price $2.60, amount $260,000.00; total for jetty work $857,500.00; For dredging, 1,250,000 cubic yards, price .17-9/10 amount $223,750.00.

No. 3, Savannah Dredging Company, Jacob Paulsen, 547 President, Savannah, Georgia, bids only on dredging .20-1/2; amount $256,250.00.

No. 4, The American Dredging Company, S. Y. Scharmerhorn, President, Philadelphia, Pa., bids only on dredging .22, amount $275,000.00.

No. 5, The Atlantic Contracting Company, John F. Gaynor, President, New York, New York; mattresses: price .95, amount $190,000.00; first class stone; price $3.90, amount $97,500.00; Second class stone: price $3.90, amount $97.500.00; Third Class stone: price $3.50, amount $175,000.00; Fourth class stone: price $2.75, amount $275,000.00; giving a total for jetty work of $835,000.00.

No. 6, Rittenhouse R. Moore, Mobile, Ala., dredging .13; amount $162,500.00.

No. 7, John L. Grim, Philadelphia, Pa., mattresses, price .98, amount $196,000.00; First class stone: price $4.00, amount $100,000.00 Second class stone: price $4.00, amount $100,000.00; Third class stone: price $3.30, amount $165,000.00; Fourth class stone: price $2.90, amount $290,000.00; aggregating a total for jetty work of $851,000.00. Remarks: Amount for which the Secretary of War is authorized to enter into contracts, $100,5000., With asterisks. It is recommended that the bid of the Atlantic Contracting Company of New York, John F. Gaynor, President, for jetty work, (The first five items), and of Rittenhouse R. Moore, of Mobile, Ala., for dredging, (Item 6.), be accepted, they being the lowest responsible bidders for the best and most suitable materials and service. With the remark as to the Virginia Dredging Company, J. Clement Shafer, Secretary and Treasurer, Richmond, Virginia, that a bond of only $50,000.00 was submitted instead of $250,000.00, as required, and in another case that of the American Dredging Company, S. Y. Schermerhorn, President, Philadelphia, Pa., that evidence of authority to bid not filed.

(Signed) O. M. CARTER,
Captain Corps of Engineers, U. S. A.,
Savannah, Georgia, September 8, 1896."

Judge-Advocate: The bids referred to in the abstract, 548 copies of them will be attached to the record, marked consecutively "Exhibits 18, 19, 20, 21, 22, 23 and 24."

Judge-Advocate: Look at "G. R. N. 13, 1892"; what is that?

A. It is a letter from the office of the Chier of Engineers notifying Captain Carter of the passage of the River and Harbor Bill and asking him to submit projects to the Engineer for the amount appropriated.

Q. What is the date of the passage of the Bill, if it is stated there?

A. July 13, 1892.

Mr. Blair: I dont know what the object of that is, anything relating to any other contract, as I understand it, has been passed upon by the court.

Judge-Advocate: I think not, may it please the court.

The President: What's the objection?

Mr. Blair: I have not made any objection, if the court

please, I want to know the nature of the evidence introduced, it seems to be going back of the 1892 contract.

Judge-Advocate: It is going back of the 1892 contract, may it please the court, I propose to go back of all the contracts, in which the parties named in this specification, No. 2, are referred to.

The President: What is the connection which you wih to show?

Judge-Advocate: I wish to show the connection, if there is a connection, or attempt to, between the accused and these parties. Do you make objection?

Mr. Blair: Unless the Judge-Advocate will state as to what particular specifications he intends to connect these contracts of 1892, I think this is due to us, if it is on the conspiracy charge, why then I think we are entitled to know that before we make the objection.

Judge-Advocate: It has reference to the Second Specification of the First Charge, as counsel surmises—that of conspiracy.

The President: The question is material then?

549 Judge Advocate: I presume you will hear their objection.

Mr. Blair: This is only preliminary as entering upon the subject.

The President: You withdraw the objection?

Judge-Advocate: He has not made any objection, formally.

Q. Give me "G. R. 13, 1892." It is the same number. Here the letter above referred to is produced by the witness.

A. This is a letter from the office of the Chief of Engineers, United States Army, July 14, 1892. The River and Harbor Act of July 13, 1892, contains the following item: "Improving Brunswick Harbor, Georgia, $27,500.00; Cumberland Sound, Georgia, $170,000.00; Savannah Harbor, Georgia, $318,750.00; Darien Harbor, Georgia, $25,000.00; Alatamaha River, Georgia, $15,000.00; Ocmulgee River, Georgia, $25,000.00; Oconee River, Georgia, $25,000.00; Savannah River, between Augusta and Savannah, $35,00.00; Jekyl Creek, Georgia, $7,500.00 Inside Water Route, between Savannah, Georgia and Fernandina, Florida, $15,000.00; Savannah River, Georgia, above Augusta, $10,000.00, project called for."

Judge Advocate: I offer in evidence, a copy of which will be attached to the record, marked "Exhibit 25"—

Mr. Blair: What is that?
Judge-Advocate: It is a communication, the brief of which, the witness read, it is preliminary.

* * * * *

553 Q. Look at "C. S. No. 1," what's that?
A. That is Captain Carter's project and expenditure for Cumberland Sound.
Q. What is the date?
554 A. July 27, 1892.
Q. Now, go to the next "C. S. No. 2," what's that?
A. That is a letter from the Cheif of Engineers, dated August 3, 1892, approving project for Cumberland Sound.
Q. It was approved, then, on August 3, 1892?
A. Yes, sir.
Q. The project?
A. Yes, sir.
Q. Now, look at C. S. N. 1, page 285, what is that?
A. That is a letter to the Chief Clerk of the War Department, Washington, D. C., through the Chief of Engineers, Washington, D. C. and Colonel William P. Craighill, Corps of Engineers, U. S. A., Division Engineer, South-east Division, Baltimore, Maryland, dated August 1, 1892, enclosing a copy of an advertisement inviting proposals for construction of a jetty at entrance to Cumberland Sound, Ga. and requesting authority to publish the same in the following official newspapers; 6 insertions in "The Mornings News," Savannah, Ga., 6 insertions in the "Times-Union," Jacksonville, Fla., 3 insertions in "Engineering & Building Record," N. Y., 3 insertions in "Engineering News," New York, N. Y., and requesting authority to print 200 copies of accompanying specification.
Q. That was on August 1, 1892, you said?
A. August 1, 1892.
Q. Sent by whom?
A. Sent by Captain O. M. Carter.
Q. Now, look at C. S. N. 3, 1892, what is that?
A. That is the approval of the foregoing letter.
Q. That is giving authority to advertise?
A. Giving authority to advertise and print specifications for proposals for constructing a jetty at entrance to Cumberland Sound, Georgia.
555 Q. That was dated August 6, 1892?
A. That was dated August 6, 1892. Approved by L. A. Grant.

Q. When was it received at the Engineer's office, does it show, I mean here?

A. On August 10, 1892.

Q. What was the date of the advertisement of the specifications?

A. August 1, 1892.

Q. When was the date of opening bids to be?

A. 10th of September, 1892.

Q. What was the first publication made of the advertisements?

Mr. Blair: We desire to examine those, if the Judge-Advocate please.

Judge-Advocate: We suspend and allow you to look at it.

Mr. Blair: I desire to examine those that you have offered, and as they are offered.

Judge-Advocate: I was simply saving time and pursuing the same plan we did in regard to the other cases.

Here papers are handed to counsel for the accused.

Q. Mr. Sterly, you were present here at Savannah at the time those things occurred, to which you have been testifying, having reference to the paper?

A. Yes, sir.

Q. What you have testified to then, is within your own knowledge?

A. Yes, sir.

Q. Now, from those papers before you, refresh your memory. How many days elapsed between the receipt of authority to advertise and the date of actual advertisement—publication of advertisement. Well, the records show that there are—I'll pass that by. What day did the first advertisement appear of those specifications?

A. On August 15, in the "Savannah Morning News."

Q. When did it appear in the next paper?

A. On August 15, in the "Times-Union," Jacksonville, Fla.

556 Q. When did it appear in the next paper on your list?

A. August 20, in the "Engineering and Building Record," New York, N. Y.

Q. How many insertions in that paper?

A. 3 insertions.

Q. When was the last insertion?

A. On September 3.

Q. What is the next?

A. "The Engineering News," New York, N. Y. on August 20, 27, and September 3, 1892.

Q. Can you find from these records when the specifications were received from the printer?

A. Not from these records, I made a memorandum, but I have not got it here.

Q. Do you know when the specifications were received?

A. About shortly before the papers were issued, the first issue of the specifications.

Q. You cannot recall, of your own knowledge. Who took them to the printer to have them published, do you know—or prepared?

A. I do not know.

Q. Cannot you find some data among those papers that will refresh your memory?

A. They were sent to Gibson Bros., in Washington on August 10.

Q. Look at page 295, "C. S. N. 1."

A. That is a letter to General Casey, Chief of Engineers, transmitting in a separate package 125 copies of the specifications for Improving Cumberland Sound, Georgia."

Q. What date is that?

A. On August 26.

Q. Does that refresh your memory to any extent?

A. Yes, sir.

Q. Were those sent under instructions?

557 A. To the Chief of Engineers.

Q. To the Chief of Engineers?

A. Yes, sir.

Q. Specific instructions or general instructions?

A. Circular from Headquarters Chief of Engineers.

Q. That is general instructions?

A. General instruction.

Q. What was the practice of sending them, how sent for printing?

A. The practice was, they would be sent as soon as the specifications were received from the printer, the general practice. There might be times when they have not been sent the same day.

Q. But usually no delay.

A. Yes, sir.

Q. No change was made in the date of the advertisement August the 1st, I understood you?

A. No change of date.

Q. Have you any record of any instructions upon that point as to the date of the advertisement?

A. Yes, sir, here is an approved copy of advertisement, which is dated August 1. Date of opening September 10, 1892. That is an enclosure to this.

Q. I dont think you understand me, Mr. Sterly, I asked if you had any special instructions in regard to it, or simply the specifications were left in that shape?

A. The specifications were left in this shape, as they came from Washington.

Judge-Advocate: This is a list of the applicants for specifications, and those who received the different copies.

Mr. Blair: We have no objection to that, subject to verification, of course, as far as we may be able to verify it and check it up.

Judge-Advocate: The names of parties, and dates of application for specifications. This is in relation to the Cumberland Sound Improveemnt for 1892

558 "Geo. Y. Wisner, Detroit, Mich., August 23, 1892.
A. G. Midford, New York, N. Y., August 24, 1892.
D. A. Gillies, Wilmington, Del., August 25, 1892.
S. S. Leonard, Mobile, Ala., August 28, 1892.
B. G. Bailey, Philadelphia, Pa., August 30, 1892.
Skinner & Wallace, Wilmington, N. C., September 3, 1892.
R. G. Ross, Jacksonville, Fla., September 6, 1892.
D. V. Howell, New York, August 27, 1892.
Carolina Brown Stone Company, Jno. W. Hinsdale, President, Raleigh, N. C., September 7, 1892."

Judge-Advocate: The names of parties who applied in person, and number of copies issued:

"Jacob Paulsen, Savannah, Ga., Sept. 5, 1892; 3 copies September 6, 1892."

Judge-Advocate: The names of parties who received specifications, one copy, and date of issue:

"Geo. Y. Wisner, Detroit, Mich., August 26, 1892.
A. G. Midford, New York, N. Y., August 27, 1892.
D. A. Gillies, Wilmington, August 27, 1892.
D. V. Howell, New York, August 29, 1892.
B. G. Bailey, Philadelphia, Sept. 2, 1892.
S. S. Leonard, Pensacola, Fla., Sept. 2, 1892.
Skinner & Wallace, Wilmington, N. C., Sept. 6, 1892.
John W. Hinsdale, Presd., Raleigh, Sept. 8, 1892.

Judge-Advocate: The names of parties who received two

additional copies: B. G. Bailey, Philadelphia, September 5, 1892.

Judge-Advocate: The names of parties returning specifications:

A. G. Midford, New York, N. Y., Sept. 6, 1892.

Judge-Advocate: There appears to be no record here os any specification delivered upon oral request. So far as the official records of the office show but one party received a full set of the specifications, that was Jacob Paulsen, and 9 received one copy, and one of those received two addi-
559 tional copies. Now, I shall in each of the cases of this nature that I present to the court read the correspondence in relation to those cases in which only one specification was sent. I made one statement, that there appeared to have been no personal application, I read the case of Jacob Paulsen, who was a personal applicant.

Judge-Advocate: Look at C. S. N. 6, 1892.

Here witness produces the paper.

Judge-Advocate: I offer in evidence and read the following:

Geo. Y. Wisner,
Civil & Consulting Engineer,
39 W. Canfield Ave.

Detroit, Mich. August 23d, 1892.

Capt. O. M. Carter,
Corps of Engrs. U. S. A.,
Savannah, Ga.

Dear Sir:

Please send me a set of specifications and blank forms for bids for the work of constructing jetty at entrance to Cumberland Sound, Ga.

Respectfully yours,

GEO. Y. WISNER.

Judge-Advocate: Now, give me page 296, C. S., N. 1 (Reads):

"United States Engineer Office.
Savannah, Ga., August 26, 1892.

Mr. Geo. Y. Wisner, C. E.,
39 W. Canfield Ave.,
Detroit, Mich.

Sir:

In compliance with request contained in your letter of 23rd instant, one copy of specifications for improving Cumberland

Sound, Georgia, is sent you herewith. Please consider the specifications carefully, and if you desire to bid upon the work
I shall take pleasure in showing you over the same, giving
560 you all the available information concerning it, and furnishing you with the two remaining copies of the specifications necessary to enable you to submit your bids. If you do not intend to bid, please return the enclosed specifications.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. Corps of Engrs., U. S. A.,"

(One enclosure).

Judge-Advocate: C. S., N. 7. 1892. I offer in evidence and read

"# 121 Liberty St., New York, N. Y.
August 24, 1892.

O. M. Carter, Capt.
Corps of Engineers,
Savannah, Ga.

Dear Sir:

Referring to your advertisement in the "Engineering News" of August 18. 92, I respectfully request you to forward me a copy of Specifications, blank forms and such information as may be proper for you to afford pertaining to the Jetty at the entrance to Cumberland Sound, Ga.

Yours very respectfully,
A. G. MIDFORD,
Contractor &c."

Judge-Advocate: Page 298, C. S., No. 1, I offer in evidence and read

"United States Engineer Office,
Savannah, Ga., August 27, 1892.

Mr. A. G. Midford,
121 Liberty St.,
New York, N. Y.

Sir:

In compliance with request contained in your letter of
561 the 24th instant, one copy of specifications for Improving Cumberland Sound, Georgia, is sent you herewith. Please consider the specifications carefully, and if you desire to bid upon the work I shall take take pleasure in showing you over the same, giving you all the available information concerning it, and furnishing you with the two remaining

copies of the specifications necessary to enable you to submit your bid. If you do not intend to bid, please return the enclosed specifications.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. Corps of Engrs. U. S. A."

(one enclosure)

Judge-Advocate: C. S., N. 8, 1892. I offer in evidence and read:

Merritt House,
N. W. Cor. Front and French Streets,
J. C. Carwood, Proprietor.
Wilmington, Del., Aug. 25, 1892.

O. M. Carter,
Capt. Corps of Engineers, U. S. A.,

Pleas send me specification and form of proposals for Constructing a Jetty at Entrance to Cumberland sound Ga & oblight,

D. A. GILLIES."

Judge-Advocate: I read from page 297, C. S. 1, and offer in evidence—

"United States Engineers Office,
Savannah, Ga., August 27th, 1892.

Mr. D. A. Gillies,
Merritt House,
Wilmington, Del.

Sir:

In compliance with request contained in your letter of 25th instant, one copy of specifications for Improving Cumberland Sound, Georgia, is sent you herewith. Please con-
562 sider the specifications carefully, and if you desire to bid upon the work I shall take pleasure in showing you over the same, giving you all available information concerning it, and furnishing you with the two remaining copies of the specifications necessary to enable you to submit your bid. If you do not intend to bid, please return the enclosed specifications.

Very respectfully,
Yours obedient servant,
O. M. CARTER,
Capt. Corps of Engrs., U. S. A.,

(one enclosure.)

Judge-Advocate: C. S. 9, 1892. I offer in evidence and read communication:

"Office of S. S. Leonard,
General contractor and builder of Pier Heads, &c.,
Mobile, Aug. 29th, 1892.

O. M. Carter, Esq.,
Capt. Corps of Engineers,
Savannah.

Sir:

Please forward to my address here specification blanks, & Etc., for Jetty work entrance of Cumberland Sound, Ga.

Yours truly,
S. S. LEONARD."

Judge-Advocate: Page 301, C. S., No. 1: (Reading)

"United States Engineer Office,
Savannah, Ga. Sept. 2, 1892.

Mr. S. S. Leonard,
Pensacola, Fla.

Sir:

In compliance with request contained in your letter of the 29th ult., one copy of the specifications for improving Cumberland Sound, Georgia, is sent you herewith. Please consider the specifications carefully, and if you desire to bid 563 upon the work I shall take pleasure in showing you over the same, giving you all the available information concerning it, and furnishing you with the two copies of the specifications necessary to enable you to submit your bid. If you do not intend to bid, please return the enclosed specifications.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. Corps of Engineers, U. S. A.,

(one enclosure.)

Judge-Advocate: C. S. N., 10:

"B. G. Bailey,
Civil Engineer. 1501 Arch St.
Philadelphia Aug. 30th, 1892.

Capt. O. M. Carter,
Corps of Engineers, U. S. A.,

Sir:

Will you kindly forward me the necessary specificatio:s

and blank forms relative to construction of "Jetty at entrance of Cumberland Sound, Ga."

Very truly yours,

B. G. BAILEY."

Copy S.

Judge-Advocate: I read in evidence C. S. No. 1, page 300,:

"United States Engineer Office,
Savannah, Ga., Sept. 2, 1892.

Mr. B. G. Bailey, C. E.,
1501 Arch St., Philadelphia, Pa.

Sir:

In compliance with request contained in your letter of the 30th ultimo, one copy of the specifications for Improving Cumberland Sound, Ga., is sent you herewith. Please consider the specifications carefully and if you desire to bid upon the work I shall take pleasure in showing you over the same, giving you all the available information concerning
564 it, and furnish you with the two remaining copies of the specifications necessary to enable you to submit your bid. If you do not intend to bid, please return the enclosed specifications.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. Corps of Engrs., U. S. A.,

(one enclosure.)

Q. What is that?

A. That is a request for two more specifications for Cumberland Sound by the same man.

Q. A telegram?

A. A telegram.

Judge-Advocate: (Reading), a telegram dated "Philadelphia, Pa. Capt. O. M. Carter, Savannah. Send me at once two more copies of proposals and specifications for Cumberland Sound work. B. G. Baily Received, U. S. Engineer Office, Savannah, Ga., Sept. 5, 1892," with a memorandum attached in red ink "Copies mailed Sept. 5/92. J. B. C."

The President: What is the date of the telegram?

Judge-Advocate: "Received September 5th, dated Philadelphia, Pa. 4, I presume that is September the 4th—a night message (C. S. 12, 1892).

Judge-Advocate: This is the answer to Mr. Bailey, C. S. 1, page 302

"United States Engineer Office.
Savannah, Ga., Sept. 5, 1892.

Mr. B. G. Bailey, C. E.,
1501 Arch St.,
Philadelphia, Pa.

Sir:

In compliance with your telegraphic request, there are sent you herewith, two additional copies of the specifications for Improving Cumberland Sound, Georgia, completing set 565 necessary to enable you to bid.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Captain Corps of Engrs. U. S. A.,
(2 enclosures.) J. B. CONNOLLY.

Judge-Advocate: C. S., N. 11; I offer in evidence and read:

Office of
The Standard Veneer Package Company,
Manufacturers of patented
Boxes and Baskets,
Grape and Fruit Baskets a Specialty.
Wilmington, N. C., Sept. 3, 1892.

Capt. O. M. Carter,
Savannah, Ga.

Sir:

Enclosed find specification for jetty work on Savannah River sent us some short time ago.

Send specifications for Cumberland Sound, and oblige,
Yours,
SKINNER & WALLACE."

Judge-Advocate: I offer in evidence and read C. S. 1, page 304:

"United States Engineer Office,
Savannah, Ga., Sept. 6, 1892.

Messrs. Skinner & Wallace,
Wilmington, N. C.,

Sirs:

In compliance with request contained in your letter of the 3rd inst., one copy of the specifications for Improving Cumberland Sound, Ga., is sent you herewith. Please consider the specifications carefully, and if you desire to bid upon the work I shall take pleasure in showing you over the same, giving you all the available information concerning it and furnish-

ing you with the two remaining copies of the specifications necessary to enable you to submit your bids. If you do
566 not intend to bid, please return the enclosed specifications.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. Corps of Engineers, U. S. A."

(One enclosure)

Judge-Advocate: S. H. No. 68; I offer in evidence and read:

"Jacksonville, Fla. Sept. 6, '92.

Capt. O. M. Carter,
U. S. Engineer Corps,
Savannah, Ga.

Dear Sir:

Will you please send me specifications and papers requisite for bidding on all work under your jurisdiction and oblige,

Yours very truly,
R. G. Ross."

Judge-Advocate: C. S., page 306:

"Savannah, Ga., Sept. 8, 1892.

Mr. R. G. Ross,
Jacksonville, Fla.

Sir:

In compliance with request contained x x x x x x x x x x x x I inclose x x x x x x x Specifications for x x x x x x Improving Cumberland Sound, Ga. x x x x x x For original letter, see Savannah Harbor book."

Judge-Advocate: This is Savannah Harbor book, No. 1, page 475:

"United States Engineer Office,
Savannah, Ga., Sept. 8, 1892.

"Mr. R. G. Ross,
Jacksonville, Fla.

"Sir:

In compliance with your request of the 6th, instant,
566½ received this day, I herewith enclose one copy of each of the specifications for Improving Harbor at Savannah Georgia, Improving Cumberland Sound, Georgia; Improving Savannah River above Augusta, Georgia. Please consider the specifications carefully, and if you desire to bid upon any or all of the works, I shall take pleasure in showing you over the same, giving you all of the available information concern-

ing them, and furnishing you with the remaining copies of the specifications, necessary to enable you to submit your bid.

"If you do not intend to bid on any particular work, please return the specifications for that work. If upon none, please return all of them.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. Corps of Engrs. U. S. A."

(Three enclosures)

Judge-Advocate: S. H., No. 59, 1892. This is a postal:

"N. Y., Aug. 27—92

"Dear Sir:

Please send me plans and specifications for govt work at Savannah, and on Cumberland Sound; not dredging. Yours,

D. V. HOWELL,
202 Broadway, N. Y. City. Room 24."

"Capt. O. M. Carter, U. S. A.,
U. S. Engineer Office,
Savannah, Georgia."

Witness: I find a letter here from Mr. Howell, in the record of Savannah Harbor.

Judge-Advocate: You have got the wrong book.

567 Judge-Advocate: That postal was with regard to all the work.

Judge-Advocate: I offer in evidence and read, C. S., No. 1, page 299:

"United States Engineer Office,
Savannah, Ga.
August 29, 1892.

"Mr. D. V. Howell,
202 Broadway,
New York, N. Y.

"Sir:

In reply to your request of 27th, instant, one copy of specifications for improving Cumberland Sound, Georgia, is sent you herewith. Please consider the specifications carefully, and if you desire to bid upon the work, I shall take pleasure in showing you over the same, giving you all available information concerning it, and furnishing you with the two remaining copies of the specifications necessary to enable you to submit your bid.

"If you do not intend to bid, please return the inclosed specifications.

"The Savannah Harbor specifications have not yet been received from the printer; but when they are, a copy will be sent you.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. Corps of Engineers, U. S. A."

(One enclosure)

568 Judge-Advocate: C. S. N. 14:

"The Carolina Brown Stone Company.
Quarries, Sanford, Moore County, N. C. Offices,
Norfolk and Raleigh.

Raleigh, N. C. September 9th, 1892.

O. M. Carter, Esq.,
Corps of Engineers U. S. A.,
Savannah, Ga.

Dear Sir:

Will you be so good as to send me specifications for the stone work required in constructing the jetty at the entrance of Cumberland Sound, and very greatly oblige,

Yours truly,
JNO. W. HINSDALE,
President."

Judge-Advocate: While this is date September the 9th, it appears to have been received "U. S. Engineer Office, Savannah, Ga., September 8, 1892. Have you the response to that, that will show.

Judge-Advocate: I offer in evidence:

"United States Engineer Office,
Savannah, Ga., Sept. 8, 1892.

Mr. Jno. W. Hinsdale,
President Carolina Brown Stone Company,
Raleigh, N. C.

Sir: In compliance with request contained in your letter dated the 9th (7th) instant, one copy of the specifications for Improving Cumberland Sound, Georgia, is sent you herewith. Please consider the specifications carefully, and if you desire to bid upon the work I shall take pleasure in showing you over the same, giving you all of the available information concerning it, and furnishing you with the two remaining copies of the specifications necessary to enable you to submit your

bid. If you do not intend to bid please return the enclosed specifications.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. Corps of Engrs., U. S. A.,

(one enclosure).

569 Q. What was the date of the award of this contract?
A. September 13, 1892.

Judge Advocate: I offer in evidence:

"United States Engineer Office,
Savannah, Ga., September 10, 1892.

Brig. Gen. Thomas L. Casey,
Chief of Engineers U. S. A.,
Washington, D. C.

General:

I have the honor to transmit herewith all proposals received for constructing jetty at entrance to Cumberland Sound, Georgia, with abstract of same, and authority as requested to award the contract to Edward H. Gaynor, the lowest responsible bidder, the prices being deemed reasonable.

Very respectfully,
Your obedient servant,
O. M. CARTER.
Capt. Corps of Engrs., U. S. A.

(4 enclosures).

Judge-Advocate: I read from the copy, there are the same contents exactly as this, with this endorsement:

1st indorsement.
Office Chief of Engineers,
U. S. Army.
Sept. 13, 1892.

Respectfully returned to Captain Carter, Corps of Engineers, approved.

When such record as may be necessary has been made this paper will be returned to this office.

By order of

MAJOR H. M. ADAMS,
Corps of Engineers.
(In charge)
THOS. TUTTLE,
Captain Corps of Engineers.

Second endorsement:

United States Engineer Office,
Savannah, Georgia, Sept. 15, 1892.

Respectfully returned to the Chief of Engineers, U. S. A., Washington, D. C. Record made.

O. M. CARTER,
Captain Corps of Engrs., U. S. A.,

Judge-Advocate: The abstract of proposals referred to is as follows:

570 United States Engineer Office,
Savannah, Ga., Aug. 1, 1892. Sealed proposals will be received at this office until 12 M., city time, on the 10th day of September, 1892, and then publicly opened, for constructing jetty at entrance to Cumberland Sound, Ga. Specifications, blank forms, and all available information will be furnished on application to this office. O. M. Carter, Captain, Corps of Engineers, U. S. A.

Abstract of Proposals for Constructing Jetty at Entrance to Cumberland Sound, Georgia, opened on September 10, 1892, by Capt. O. M. Carter, Corps of Engineers, U. S. A.

——ooOoo——

No. of proposal	Name of Bidder	Residence	PRICE FOR Mattresses per sq. yd.	Riprap per cu. yd.	Total
1	Chas. C. Ely	Savannah, Ga.	$1.32	$3.78	$211,44
2	Wm. H. Walsh	Fernandina, Fla.	1.26	3.72	204,96
3	Edward H. Gaynor	"Boston, Mass.	1.05	3.59	184.52

Remarks: Amount available, $170,000.

"Bid recommended for acceptance, he being the lowest responsible bidder for the best and most suitable materials and service.

I hereby certify that the above Abstract of Proposals is correct.

O. M. CARTER,
Capt. Corps of Engrs., U. S. A.,
Savannah, Ga., Sept. 10, 1892.

571 Judge-Advocate: The three proposals referred to with the abstract are offered in evidence, copies will be attached to the record and marked "Exhibits 26, 27 and 28."

Judge-Advocate: I offer in evidence the contract entered into with the successful bidder, as he appears on that abstract between Capt. O. M. Carter of the one part, entered into September the 16th, 1892, and Edward H. Gaynor of

the other part, for constructing jetties at entrance to Cumberland Sound, Georgia.

The President: One of the five originals, is it?

Judge-Advocate: One of the originals, as testified to by the clerk from the Engineer's office here. It has been identified.

Judge-Advocate: The contract which was just placed in evidence bears the approval of Thomas Lincoln Casey, Brigadier-General, Chief of Engineers, September 27, 1892.

The President: The court will take a recess for 10 minutes.

Here, at 12.35 o'clock p. m., the court takes a recess.

Here the court met pursuant to recess at 12.45 o'clock p. m.

Present: All the members of the court, and the Judge-Advocate; the accused, his counsel, and the reporter, George T. Cann, were also present.

J. W. O. STERLY, on the stand, having been previously sworn, continued to testify as follows:

Direct Examination (Continued):

Questions by the Judge-Advocate.

Q. Mr. Sterly, I now call your attention to the subject of the improvement of Savannah Harbor of 1892. The appropriations for that improvement were contained in the same act as the appropriations for the improvement of Cumberland Sound, as I understand?

A. Yes, sir.

Q. Now, what was the date of the project for expenditures; when was the project of expenditure called for: G. R. 13?

572 A. G. R., 13 is in evidence with the Cumberland Sound before, the Cumberland Sound contract.

Q. The project was called for the same date in the same letter?

A. Yes, sir.

Q. July 13, 1892, if I remember rightly. Was the project for expenditure submitted at the same time for Savannah Harbor as for Cumberland Sound?

A. Yes, sir.

Q. S. H., 1, page 263?

A. It was submitted on July 18, 1892.
Q. That is the same date it was called for?
A. It was called for on July 18, the same date.
Q. What date do you find the approval, if you find it?
A. July 20, 1892.
Q. What was the date of submitting the jetty specifications, with request to advertise?
A. July 18, 1892.
Q. Have you the letter, asking for that authority?
A. Yes, sir.
Q. Let me have it. (Here the letter is produced by the witness.)
A. There are two letters.
Q. I want the original letter.
A. Here is the original. (Handing paper)
Judge-Advocate: I offer in evidence and read:

"United States Engineer Office,
Savannah, Ga., July 18, 1892.

"The Chief Clerk of the War Department,
Washington, D. C.

"(Through the Chief of Engineers, U. S. A., Washington, D. C., and Colonel William P. Craighill, Corps of Engineers, U. S. A., Division Engineer, Southeast Division Engineer, Baltimore, Maryland.)

"Sir:

I herewith inclose a copy of an advertisement, inviting 573 proposals for constructing training walls in the Savannah Harbor, Ga., and request authority to publish the same in the following official newspapers:

6 insertions in Savannah Morning News.
6 insertions in Charleston News and Courier.
6 insertions in Jacksonville Times-Union.
3 insertions in New York Engineering News.
3 insertions in New York Engineering News.
3 insertions in New York Marine Journal.

I also request authority to print 250 copies of accompanying specifications.

Very respectfully,
Your obedient servant,
O. M. Carter,
Capt., Corps of Engrs., U. S. A.

(2 enclosures)

First Endorsement

Office Chief of Engineers,
U. S. Army, July 20, 1892.

Respectfully forwarded to the Chief Clerk of the War Department with recommendation that the authority within asked for be granted.

THO. LINCOLN CASEY,
Brig.-Gen. Chief of Engineers.

Second Endorsement,
War Department,
July 20, 1892.

Approved, B. Elkins, Secretary of War.

Third Endorsement,
U. S. Engineer Office,
Savannah, Ga., November 1, 1892.

Respectfully returned to the Chief Clerk War Department, Washington, D. C., with the following bills and vouchers in duplicate:

Judge-Advocate: That is simply a statement of the account for the advertising.

Q. This letter appears to have been letter pressed, does it appear in the official record?

574 A. No, sir.

Q. Have you made a search as of that date?

A. There is a letter.

Q. That letter I am referring to?

A. Yes, sir.

Q. That letter I am referring to?

A. This letter I cannot find in the copy book.

Q. Do you find a letter of similar import?

A. Yes, sir (Handing Judge-Advocate copy book).

Q. This is the Savannah Harbor book, so called?

A. Yes, sir, Number 1.

Judge-Advocate: S. H. 1, page 368, I offer in evidence and read the copy, reading from the public records a copy in typewriting of the letter identical in term with that which I have just read. It will be offered to counsel to compare the two:

"United States Engineer Office,
Savannah, Ga., July 18, 1892.

The Chief Clerk of the War Department,
Washington, D. C.

(Through the Chief Engineer, U. S. A., Washington, D. C., and Col. Wm. P. Craighill, Chief of Engineers, U. S. A., Division Engineer South-east Division, Baltimore, Maryland.)

Sir:

I enclose herewith a copy of an advertisement inviting proposals for constructing training walls in the Savannah Harbor, Georgia, and request authority to publish the same in the following official newspapers:

6 insertions in Savannah Morning News.
6 insertions in Charleston News and Courier.
6 insertions in Jacksonville Times-Union.
3 insertions in New York Engineering News.
3 insertions in New York Marine Journal.

I also request authority to print 250 copies of accom-
575 panying specifications.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. Corps of Engrs., U. S. A.

(2 enclosures.)

Q. Whose handwriting is that, Mr. Sterly? If you know (Handing witness the above original letter of July 18, 1892.)?

A. Captain Carter's.

Q. Where are the specifications that accompanied this communication? (Here a paper is opened) These are the original specifications that accompanied that?

A. Yes, sir.

Q. In whose handwriting are they?

A. Captain Carter's.

Q. Upon what date were the bids to be opened?

A. On the 20th of August 1892.

Q. Has an original of that typewritten letter, copied in the book, ever been returned to the Department after it was sent out of the Department, to your knowledge?

A. I have not seen it.

Q. All official communication, then, has been had upon that paper?

A. Yes, sir.

Q. Including the payment of accounts for printing?

A. Yes, sir.

Q. The bids were to be opened August 20th?
A. On August 20th.
Q. What was the date of the first advertisement? The first publication of an advertisement?
A. July 27th.
576 Q. In what paper?
A. In the Morning News, Savannah.
Q. When was it first published in the News and Courier?
A. July 28.
Q. That was in Charleston, South Carolina, I presume?
A. Charleston, S. C.
Q. When in the Times-Union of Jacksonville, Fla.
A. July 28.
Q. When in the Engineering News New York?
A. July 30.
Q. How many insertions?
A. Three insertions were ordered.
Q. When in the Marine Journal of New York?
A. On July 30th.
Q. When was this communication received back in the Engineer's Officer here in Savannah (Handing witness the letter)?
A. On July 26, 1892.
Q. July 26. That appears from the file mark stamped on the paper itself?
A. Yes, sir.

Judge-Advocate: Now, here is a list of applicants for specifications.

Mr. Blair: Now, if the court please, we object to the introduction of that list. If the Judge-Advocate is going to read the letters we are entirely willing that the list shall go in, we have no objection to that, and, of course, the Judge-Advocate can put in the letters whether we object or not, but in the interest of saving time we are willing to do just as we did yesterday afternoon at the close of the session, or just before the session closed, to let that list go in and let it be stated in the record that the letters are of similar tenor to the letters read this morning, but we object to both the list and the record itself.

577 Judge-Advocate: I dont care to have you make a statement as to this list.

Mr. Blair: If there are any practical reasons why the letters should go in we have no objection.

Judge-Advocate: I will yield to the counsel so far as this

list is concerned and shall not consume the time of the court in reading the letters in regard to this list. I will state what it shows, however, this list shows the applications for specifications under the advertisement that has been testified to. "Ross and Sandord, C. C. Ely, Agent, July 29, 1892, applies for one copy, which was sent him on July 30, 1892, and he applied for two additional copies on August 2, 1892, and they were sent him on August 3, 1892.

John G. Smith, Charleston, presumably South Carolina, July 29, 1892, and they were sent him on July 30, one copy.

John F. Gaynor, New York, July 30, 1892, and they sent him one copy July 30, 1892.

Jacob Friday, Pittsburgh, Pa., July 30, 1892, August 1, 1892, one copy sent him.

J. D. Walker, Alleghaney, Pa., August 1, 1892, one copy sent him August 5, 1892.

Geo. A. Mercer, Jr., Savannah, Ga., August 1, 1892, one copy sent him August 1, 1892.

G. F. Broughton, Jacksonville, August 2, 1892, there was sent him one copy August 5, 1892.

M. D. McIsaac and Company, Wilmington, August 2, 1892, one copy sent them August 5, 1892.

Stewart Stone Company, Columbia, S. C., August 3, 1892, one copy sent them August 5, 1892.

Mason Gooch & Hoge Company, Frankfort, Ky., July 28, 1892, sent them one copy August 11, 1892.

International Contracting Company, New York, August 6, 1892, a full set of three was sent August 10, 1892.

578 Skinner & Wallace, Wilmington, August 5, 1892, and August 12, 1892, there was one copy sent August 11, 1892 and two additional copies sent August 16, 1892.

Henry K. Gustin, Oscala, August 7, 1892, one copy sent August 11, 1892.

Grant Wilkins, Atlanta, Ga., August 8, 1892, one copy sent August 11, 1892.

R. Moore & Co., Mobile, Ala., August 8, 1892. One copy sent August 11, 1892.

McGee, Kahmann & Co., Kansas City, August 8, 1892. One copy sent August 12, 1892.

International Contracting Company, New York, August 11, 1892, "Will send specifications as soon as they are out" August 13, 1892.

B. G. Bailey, Philadelphia, August 13, 1892, one copy of specifications sent August 16, 1892.

Kingbridge Company, Chattanooga, August 15, 1892, one copy sent August 16, 1892.

J Marzych & Co., Jacksonville, no date, one copy sent August 16, 1892."

Q. Were there any bids opened under the specifications referred to?

A. No, sir.

Q. Why not?

A. They were recalled, Captain Carter received a telegram.

Q. Do you know that?

A. Yes, sir. (Handing the Judge-Advocate paper), that is an official copy of the telegram sent from Washington.

Q. By whom is it certified?

A. By Major Adams, Corps of Engineers.

Judge-Advocate: I offer in evidence and read this official copy of a telegram: S. H. 45:

"Telegraph at Government rates.

Washington D. C., August 18, 1892.

Captain Carter,

579 Southern Bank Building,

Savannah, Georgia.

Authority to advertise Savannah dreedging asked for August Third not granted. On account of Eight hour law, return unopened all bids for stone, etc., in Savannah Harbor invited July Eighteen.

Request authority to re-advertise for bids for improving harbor as a whole; one set of specifications only, covering all work.

H. M. ADAMS,
Engineers?

Collect.

Official copy by mail.

H. M. Adams,

Major Corps of Engineers."

Q. After that action was taken, when was authority again asked to print and advertise?

A. On August 17, 1892.

Q. On August 17? Why, it was on August 18 that it was withdrawn. Look at it, look at S. H. 1, page 426, see if you can refresh your memory?

A. August 18, that is a telegram to the Chief of Engineers, U. S. Army, Washington, D. C. "Please return Savan-

nah Harbor Specifications as I have no copy, that I may prepare combined sets as soon as possible.

Q. Now, look at S. H. 47.

A. That is a letter from the Chief of Engineers dated August 18. "As requested, transmits original specifications for dredging in Savannah Harbor."

Q. Look at S. H. page 428.

A. That is a telegram to the Chief of Engineers dated August 18, 1892, "Do not fully understand telegram. The clause relating to 8 hour law has been attached to all specifications that were sent out relating to stone, etc., in Savannah Harbor. Is this sufficient, or must the whole work, jetty and dredging, be let to one contractor on new specifications. Official business government rate, paid? Charge

580 Q. Now, look ar S. H. 46?

A. That is a true copy of a telegram of the Chief of Engineers dated August 18, 1892. "Captain Carter, Engineers, Southern Bank Building, Savannah, Georgia, the whole work on jetties and dredging Savannah Harbor must be re-advertised in one set of specifications, by direction of General Casey. H. M. Adams, Engineers. A true Cope, John G. D. Knight, Captain, Corps of Engineers."

Q. Now, look at S. H. 55?

A. That is a letter from the Chief of Engineers, dated August 20, 1892.

Q. What is it?

A. A letter addressed to Captain O. M. Carter:

Captain O. M. Carter,
Corps of Engineers,
Richfield Springs, N. Y.

Captain:

I have to furnish for your information the accompanying copy of your letter of the 17th instant, with the endorsements thereon, relative to advertisement and specifications for work at Savannah Harbor, Georgia. You will please return the two enclosures handed to you in this office August 20.

Very respectfully,
Your obedient servant,
H. M. Adams,
Major, Corps of Engineers, In charge.

4800-1892.
Copy of 4800-accompanying.

Q. Look at S. H. 1, page 447?
A. That was a letter written by Captain Carter to the Chief of Engineers under date of August 24, 1892.
Q. Read it?
581 A. (Reading)

"U. U. Engineer Office,
Savannah, Ga., Aug. 24, 1892.

The Chief of Engineers, U. S. A.,
Washington, D. C.

General:

I have the honor to request authority to modify the specifications approved by the Secretary of War, Aug. 20/1892, relating to Savannah Harbor, Georgia.

The specifications, as approved, provide in par. 53 that * * * "The work will not be divided between two or more "contractors, but will be awarded to the lowest responsible "bidder, who furnishes satisfactory evidence of his ability to "prosecute the work vigorously as required." * * *

There are two distinct classes of work in Savannah Harbar, viz., jetty work, and dredging, and contractors hving plants suitable for one class of work have none suitable for the other, and are moreover unskilled in the two classes of work.

The only way in which a contractor for one class of work could bid intelligently on the other class would be to form a partnership with another contractor having experience in that class of work. When combinations are thus entered into, it is feared that prices will be increased. Moreover, there are some contractors for dredging who desire to bid on the work who cannot do so at all if they must bid on the whole work. For these reasons it appears to me desirable to change the clause of the specifications hereinbefore quoted, and I therefore have the honor to request authority to substitute for it the following: * * * "The United States reserves the "right to award the contract for jetty work, (items 1 to 9 in- "clusive), to one bidder, and that for dredging, (items 10 "and 11), to another, but neither the jetty nor the dredging "will be divided between two or more contractors, but

"the contract for the entire work, or for each of the
582 "two classes of work may be awarded to the lowest re-

"sponsible bidder who furnishes satisfactory evidence of "his ability to prosecute the work vigorously as required." * * *

The contract can then be awarded as a whole, or in two

parts, as appears most desirable and advantageous to the United States.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt., Corps of Engineers, U. S. A.,"

Q. Look at S. H. 60.
Mr. Blair: I just want to get the date of that letter.
A. August 24, 1892. (To Mr. Blair.). (Answering Judge-Advocate's question) This is an official copy of a telegram from Washington to Captain Carter.
Q. By whom is it certified to be official?
A. H. M. Adams.
Q. Read it.
A. (Reading)

"Telegraph At Government Rates.
Washington, D. C., Aug. 27, 1892.

Captain Carter,
Southern Bank Building,
Savannah, Ga.

Secretary of War has authorized change in specifications for Savannah Harbor as recommended in your letter of August twenty-four.

H. M. ADAMS,
Engineers.

Collect.
Official copy by mail:
H. M. Adams,
Major, Corps of Engineers."

Q. What was the date of opening bids given in those specifications?
The President: You mean given in the advertisement, don't you?
Judge-Advocate: Yes. Never mind that just now. When was authority given to advertise; to re-advertise?
583 A. August 20, 1892.
Q. Upon a written application by Captain Carter from this office, from the office in Savannah?
A. Yes, sir, on the written application of August 17, 1892.
Q. Did the specifications accompany that? Did you find any request for authority subsequent to August 18, 1892?
A. I beg your pardon.
Q. Do you find any request for authority to advertise subsequent to August 18, 1892? there?

A. No, I dont find any, this letter of August 17th relates to dredging.

Q. But what I am endeavoring to find, Mr. Sterly, are the specifications that were to be advertised for bids under this contract for this improvement so far as your official records show. Then there is no no written application to re-advertise for bids (Here witness searches for papers).

Judge-Advocate: Well, if you dont find it, Mr. Sterly, we will get at it another way, never mind it Mr. Sterly.

Q. Do you remember the date for opening bids?

A. September 17, I am not sure.

Q. That's your impression, 1892?

A. Yes, sir.

Q. Now, please look at your records, Book 1, page 435,

A. That is a letter to the Morning News in Savannah asking them to publish the enclosed advertisement.

Q. What date?

A. The letter is dated August 22, 1892.

Q. When was the first publication made in that paper?

A. On August 23rd.

Q. When was the first publication made in the Times-Union, Jacksonville, Florida?

A. August 22.

584 Q. Do you find that there on page 437?

A. August 24.

Q. August 24. When was it first published in the News and Courier of Charleston, South Carolina. Page 439.

A. August 24.

Q. When in the New York Seaboard: page 440.

A. August 27—there's a correction here "August 25."

Q. August 25?

A. Yes, sir.

Q. Have you any record there of when the specifications were received from the printer?

A. Yes, sir.

Q. When was it?

A. There is a letter from Gibson Brothers, Washington, D. C., dated August 29, 1892, "Captain Carter, Sir: Your telegram of this morning is received. The specifications were shipped on Saturday. Yours truly, Gibson Brothers.

Q. That is simply information that they had been shipped. I mean to their receipt here. I will ask you when the first specifications were issued?

A. On August 29. There is also a telegram to Gibson Brothers on the same date.

Q. How were they issued?

A. They were issued on application.

Judge-Advocate: I have another list of applicants here, gentlemen (to counsel for the accused). This is a list of applicants for specifications and information it appears that those who received them in response to written application but one copy, was 11, and those who received additional two copies, 2; those who received full sets on written application, 5, and three with an interrogation mark, which I shall ask to be explained. Upon oral application four received three sets of specifications, or full sets, and one received one.

585 Judge-Advocate: In spite of the objection of the counsel, I propose to place upon the record the correspondence which was had with these parties who received but one copy of the specifications.

Mr. Blair: We cannot object.

Judge-Advocate: Please give me File No. 50 (Here a paper is handed to the Judge-Advocate). That appears to be a communication not signed, I will make no use of it. Give me File marked 51.

Mr. Rose: Was anything said in response to that letter which was not signed?

Judge-Advocate: No, I can show you the letter (Here the witness hands the paper to the Judge-Advocate).

Judge-Advocate: File No. 51, I offer and read from.

Water Works, Sewerage, Railroads.
Stewart K. Smith, C. E.
Surveying and Draughting.
Ballard, Washington, August 15, 1892.

O. M. Carter, Captain Corps Engineers, U. S. A.
U. S. Engineer's Office,
Savannah, Ga.

Dear Sir:

Will you kindly send me a copy of the specifications for the stone, mattress, fascine and pile work in Savannah Harbor as advertised in "Engineering News" of Aug. 4th, and oblige,

Yours very respectfully,
STEWARDT K. SMITH."

Box 254

Judge-Advocate: Now give me S. H. 1, page 441. (Here the book and page is handed the Judge-Advocate).

Judge-Advocate: I read in evidence:

"United States Engineer Office,
Savannah, Ga., August 26, 1892.

Mr. Stewart K. Smith, C. E.,
City Engineer, Ballard, Wash.

Sir:

In compliance with request contained in your letter of the 15th instant, I transmit herewith copy of specifications 586 for stone, mattress, fascine, and pile work in Savannah Harbor, Ga.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt., Corps of Engrs., U. S. A."

(One enclosure.)

Mr. Rose: How can that be, he didn't get it back until the 29th.

Witness: That is the old copy, and the date is changed too. No,

Q. Is that letter signed by Captain Carter?

A. Yes, by Captain Carter.

Q. Give me File marked 52. (Here letter is handed Judge-Advocate).

Judge-Advocate: I read in evidence:

San Francisco Bridge Company,
Engineers and Contractors,
World Building, New York, N. Y.
San Francisco, and Seattle.

New York, Aug. 17, 1892.

Captain O. M. Carter,
Corps of Engineers, U. S. A.,
Savannah, Ga.

Dear Sir:

Your favor of August 10th noted, we would like to investigate your work at Savannah, or other places that you may have dredging work to do. Wish you would kindly send us copy of specifications when ready, for work in your charge. In this connection, wish you would kindly keep in mind that we prefer to do work by hydraulic method, where possible, and, in that case, desire measurements in situ instead of in scows. Of course, as you know, there is considerable difference for material measured in situ over material measured

in scows. If you can do so, wish you would make provision for this in your specifications.

Yours very truly,
SAN FRANCISCO BRIDGE COMPANY,
By Geo. W. Catt, Vice-Prest."

587 Judge-Advocate: To this reply was made S. H. 1, page 445, August 26, 1892. That does not seem to say anything about specifications. It may be covered—Look at File marked 56, it may be covered by that, possibly. No. It is noted here that one specification was sent to New York and three to San Francisco August 29, 1892. S. H. 1, 458: I offer in evidence and read:

"United States Engineer Office,
Savannah, Ga., August 29, 1892.

San Francisco Bridge Co.,
42 Market St.,
San Francisco, Cal.

Sirs: In compliance with request of Mr. Catt, I send you herewith a complete set of specifications for the work proposed for the improvement of Savannah Harbor, Ga.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt., Corps of Engrs., U. S. A."

(3 enclosures.)

Judge-Advocate: S. H. 1, 459:

"United States Engineer Office,
Savannah, Ga., August 29, 1892.

The San Francisco Bridge Co.,
World Building,
New York, N. Y.

Sirs:

In compliance with your request, I send you herewith one copy of the specifications for the improvement of Savannah Harbor, Georgia, a complete set has been sent to San Francisco, as requested by you.

Judge-Advocate: File No. 54, from Atlanta, Georgia, August 20, 1892.

588 "Atlanta, Georgia, August 20, 1892.

Capt. O. M. Carter,
Corps U. S. Engineers,
Savannah, Ga.

Dear Sir:

I understand that the letting for the harbor work has been postponed and will be re-advertised,—kindly send me a copy of the new specifications for same, and oblige,

Yours truly,

V. H. KRIEGSHABER".

Judge-Advocate: To which this response was made, S. H. 1, page 456.

"United States Engineer Office,
Savannah, Ga., August 29, 1892.

Mr. V. G. Kriegshaber,
8 N. Forsythe St.,
Atlanta, Ga.

Sir:

In compliance with request contained in your letter of the 20th instant, one copy of the specifications for Improving the Harbor at Savannah, Georgia, is sent you herewith. Please consider the specifications carefully, and if you decide to bid upon the work I shall take pleasure in showing you over the same, giving you all the available information concerning it, and furnishing you with the two remaining copies of the specifications necessary to enable you to submit your bid. If you do not intend to bid, please return the enclosed specifications.

Very respectfully,
Your obedient servant,

O. M. CARTER,

(One enclosure.) *Captain Corps of Engineers, U. S. A.*"

Judge-Advocate: File No. 59.

A. It is among the Cumberland Sound papers.

Q. It is among the Cumberland Sound papers?

589 A. Yes, sir.

Q. That was answered at the same time—that letter covered the application for both contracts?

A. For both contracts.

Q. Both advertisements?

A. Yes, sir.

Judge-Advocate: All right.

Judge-Advocate: File No. 62.

"Frank C. Somers,
Dredging,
211½ Market Street.
Camden, N. J., August 29th, 1892.

O. M. Carter, Captain of Engineers,
Savannah, Ga.

Sir:
Please send me specifications for improving Savannah Harbor.

Yours respectfully,
FRANK C. SOMERS."

Judge-Advocate: I read from S. H. 1, page 467.

"United States Engineer Office,
Savannah, Ga., August 31, 1892.

Mr. Frank C. Somes,
211½ Market St.,
Camden, New Jersey.

Sir:
In compliance with request contained in your letter of the 29th inst., one copy of the specifications for improving the Harbor at Savannah, Georgia, is sent you herewith. Please consider the specifications carefully, and if you decide to bid upon the work I shall take pleasure in showing you over the same, giving you all the available information concerning it, and furnishing you with the two remaining copies of the specifications necessary to enable you to submit your bids.

If you do not intend to bid, please return the enclosed 590 specifications.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt., Corps of Engrs., U. S. A.

(One enclosure).

Judge-Advocate: File 63: Savannah, Georgia, August 29, 1892.

Never mind that. He got what he asked for.

Judge-Advocate: File No. 65: National Dredging Company, September 5, 1892. That is all right, so far as this reading is concerned.

Judge-Advocate: File No. 68:

A. It is in evidence with Cumberland Sound.

Q. That was in the letter read yesterday then?

A. This morning, the 1892 contract, that letter.

Judge-Advocate: File No. 71:

Southern Supply Company & R. C. Strother, Contractors.
Atlanta, Ga. Sept. 8, 1892.

O. M. Carter,
Capt. Corps Engrs.
Savannah, Ga.

Dear Sir:

Will you please mail us copy of specifications and blank form covering information regarding improvements Savannah Harbor.

Very Respy,
SOUTHERN SUPPLY CO. & R. C. STROTHER.
S.

Judge-Advocate: S. H. 1, page 476:

"United States Engineer Office,
Savannah, Ga., September 9, 1892.

Southern Supply Co. & R. C. Strother,
Contractors,
Atlanta, Georgia.

Sirs:

In compliance with request contained in your letter of
591 the 8th instant, one copy of the specification for improving Harbor at Savannah, Georgia is sent you herewith. Please consider the specifications carefully, and if you decide to bid upon the work I shall take pleasure in showing you over the same, giving you all the available information concerning it and furnishing you with the two remaining copies of the specifications necessary to enable you to submit your bids. If you do not intend to bid, please return the enclosed specifications.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt., Corps of Engrs., U. S. A.

(one enclosure).

Judge-Advocate: Give me S. H. 1, page 462.

"United States Engineer Office,
Savannah, Georgia, August 29, 1892.

Mr. G. W. Eagan,
Charleston, S. C.

Sir:

In compliance with your verbal request of this day, one copy of the specifications for improving the harbor at Savannah, Georgia is sent you herewith. Please consider the specifications carfully, and if you decide to bid upon the work

I shall take pleasure in showing you over the same, giving you all the available information concerning it, and furnishing you with the two remaining copies of the specifications necessary to enable you to submit your bid. If you do not intend to bid, please return the enclosed specifications.

Very respectfully,
Your obedient servant,

O. M. CARTER,
Capt., Corps of Engrs., U. S. A.

(one enclosure).

592 Judge-Advocate: Please give me file No. 75 (Witness hands paper to Judge-Advocate.)

Judge-Advocate: I offer in evidence and read:

N. Y. Sept. 7-92.

Capt. O. M. Carter, U. S. A.,
Dear Sir:

Some parties here together with myself are conferring as to making a bid. What security is necessary on the brush and logs and stone work alone, mattrass also, how much time will it take to look over the work and place to get logs and brush. Can any stone be had inland in Georgia. Please send additional papers to make bid, and so forth by next mail. The time is extremely short for us. One of our party being far West.

Very truly yours,

D. V. HOWELL,
202 Broadway, N. Y. City."

Judge-Advocate: S. H. 1, page 479.

"United States Engineer Office,
Savannah, Ga., Sept. 10, 1892.

Mr. D. V. Howell,
202 Broadway,
New York City.

Dear Sir:

I enclose two copies of the S. P. C. P. for improving Savannah Harbor, as requested. The bidders bond is mentioned in the specigication, viz., two sureties, each justifying in the sum of $375,000.00.

It would take several days to look over work properly, including places for obtaining material, as brush and logs must be brought long distances.

Yes, suitable stone can be had in Georgia, near Atlanta.

Very respectfully,

O. M. CARTER,
Capt., Corps of Engineers, U. S. A.,

(2 enclosures).

593 Q. Whose handwriting is that?
A. Captain Carter's handwriting.

Judge-Advocate: I offer in evidence a communication from the accused:

"Subject: Proposals Improving Harbor at Savannah, Ga.
United States Engineering Office.
Savannah, Ga., Sept. 17, 1892.

Brig.-Genl. Thos. L. Casey,
Chief of Engineers, U. S. A.,
Washington, D. C.

General:

I have the honor to transmit herewith all proposals received this day for Improving Harbor at Savannah, Ga.

A total of the lowest bid for jetty work, and the lowest bid for dredging is $105,000 less than the lowest proposal of a single bidder for all of the items, and I have the honor therefore to request authority to award the contract for jetty work to the Atlantic Contracting Company of N. Y., John F. Gaynor, Prest. (the lowest bidder for jetty work); and that for dredging to P. Sanford Ross of Jersey City, N. J. (The lowest bidder for dredging), the prices in each case being considered satisfactory and reasonable.

An abstract of the proposals is transmitted herewith.

Very respectfully,
Your obedient servant,

O. M. Carter,
Capt., Corps of Engineers."

(6 enclosures).

"1st indorsement
Office Chief of Engineers,
U. S. Army.

Sept. 21, 1892.

Respectfully returned to Captain Carter, Corps of Engineers, approved.

When such record as may be necessary has been made 594 this paper will be returned to this office.

By command of Brig. Gen. Casey:

Thos. Tuttle.
Captain, Corps of Engineers.

Mr. Blair: I would like to ask, Colonel, it is not to be implied that the letters which you have read with respect to the specifications of this contract are exhaustive of the parties who have applied, is that true?

Judge-Advocate: I give all the information that I have,

Mr. Blair, whether it is against, apparently against the interests of the accused or for him. I have no doubt all those instances given the records show.

Mr. Blair: You dont understand me. You read letters asking for copies of specifications and letters in reply thereto. No, thus far you have read 9 sets of letters, we have a list here of a considerable number of parties who applied and got specifications.

Judge-Advocate: There were other specifications, in which three were sent. I stated I should not read those. If you desire it, I shall follow it up and read them.

Mr. Blair: No, we simply want the court to understand that they do not cover all the letters sent and replied to.

Judge-Advocate; No, I think I stated to the court, and I think the court understood me, that I should only read correspondence where there was one copy of specifications sent, does the court so understand me?

The President: Yes.

Mr. Blair: That's my mistake.

Judge-Advocate: The abstract of proposals referred to in the communication just read is as follows:

The National dredging Company of Wilmington, Deleware, made no bid except wharfing or revetment, 2500 linear feet, price $50, amount $125,000; dredging, 7,000,000 cubic yards, price .17.9, amount $1,253,000; total, $1,378,000. There were
of mattresses, 350,000 square yards, fascines 300,000
595 square yards, pile work 50,000 linear feet, cluster fender
piles, 200 clusters, groups of tie piles, 1500 groups; thorn timber, 800,000 feet B. M.; iron bolts, 200,000 pounds; riprap stone, 200,000 cubic yards; large stone, 50,000 tons; wharfing or revetment 2500 linear feet, dredging 7,000,000 cubic yards.

The American Dredging Company, L. Y. Schermerhorn, President, Philadelphia, Pa., price $1.08, amount $378,000 for mattresses; fascines, price $1,80, amount $450,000; pile work, price $1.75, amount $87,500; cluster fender piles, price $60, amount $12,000; group of tie piles, price $24, amount $36,000; sawn timber, price $35, amount $28,000; iron bolts, price .05c, amount $10,000, riprap stone, price $3, amount $600,000; large stone, price $2.80, amount $140,000; total $1,831,500; wharfing or revetment, price $38, amount $95,000; dredging, price .17-1/4c, amount $1,207,500; total $1,302,500; grand total $3,134,000:

P. Sanford Ross, Jersey City, N. J., mattresses, price $1.10,

amount $385,000; fascines, price $1.79, amount $537,000; pile work, price $1.44, amount $72,000; cluster fender piles, price $47, amount $9,400; groups of tie piles, price $24, amount $36,000; sawn timber, price $33, amount $26,400; iron bolts, price .045, amount $9,000; riprap stone, price $3.04, amount $608,000; large stone, price $2.56, amount $128,000; total $1,810,800; wharfing or revetment, price $40, amount $100,000; dredging, price .16, amount $1,120,000; total $1,220,000; grand total $3,030,800:

W. F. McCauley, Savannah Ga., mattresses, price $1.13, amount $395,500; fascines, price $1.74, amount $522,000; pile work, $1.55, amount $77,500; cluster fender piles, price $51, amount $10,200; groups of tie piles, price $20, amount 30,000; sawn timber, price $33, amount $26,400; iron bolts .04, $8,000 amount; riprap stone, price $3.08, amount $616,000; large stone, price $2.60, amount $130,000; total $1,815,600; wharfing or revetment, price $43, amount $107,500; dredging, price 17c, amount $1,190,000; total $1,297,500; grand total $3,113,100:

596 The Atlantic Contracting Company, John F. Gaynor, Prest., New York, N. Y., mattresses, price .95, amount $332,500; fascines, price $1.60, amount $480,000; pile work, $1.60, amount $80,000; cluster fender piles, price $50, amount $10,000; groups of tie piles, price $20, amount $30,000; sawn timber, price $30, amount $24,000; iron bolts, price .05, amount $10,000; riprap stone, price $2.95, amount $590,000; large stone, price $2.60, amount $130,000; total $1,686,500; wharfing or revetment, price $40, amount $100,000; dredging, .17-1/2, amount $1,225,000; total $1,325,000; grand total $3,011,500:

To this paper there is attached a copy of advertisement, as follows:

United States Engineer Office, Savannah, Ga., August 17, 1892. Sealed proposals for improving Harbor at Savannah, Georgia, will be received at this office until 12 M., city time, on the 17th day of September, 1892, and then publicly opened. Specifications, blank forms and all available information will be furnished on application to this office. O. M. Carter, Capt. Corps of Eng'rs, U. S. A.

Remarks: (Amount for which the Secretary of War (is authorized to enter into contracts, $3,150,000
(Amount available, under the present (appropriatation, $310,000.

I hereby certify that the above abstract of proposals is correct.

O. M. CARTER,
Capt., Corps of Engrs., U. S. A.,
Savannah, Ga., Sept. 17, 1892.

It is recommended that the bids of The Atlantic Contracting Company, of New York, N. Y., John F. Gaynor, President, for jetty work (the first nine items), and that of P. Sanford Ross, Jersey City, N. J., for dredging (10th and 11th items) be accepted, they being the lowest responsible bidders for the best and most suitable materials and service."

597 Judge-Advocate: I submit these proposals accompanying the abstract, I offer in evidence the proposal of the National Dredging Company, the American Dredging Company, the American Dredging Company, P. Sanford Ross, W. F. McCauley, The Atlantic Contracting Company, referred to in the abstract, copies of which will be attached to the record marked "Exhibits 31, 32, 33, 34.

Judge-Advocate: I offer in evidence the articles of agreement October 22, 1892, between Captain O. M. Carter, Corps of Engineers, U. S. A., of the one part and the Atlantic Contracting Company of the other part for constructing training walls, jetties, and spur dams in Savannah Harbor, Georgia. Approved November 10, 1892. A copy of this will be attached to the record and marked "Exhibit 36."

Judge-Advocate: Look at G. R. N. 25: August 20, 1894? What is that?

A. It is a letter from the office of the Chief of Engineers to Captain Carter.

Q. Well, you may give a brief description of it anyway.

A. Transmits amounts appropriated by River and Harbor act of August 17, 1894, with directions to submit projects for the expenditure of the same.

Q. For what improvements?

A. For the improvement of the Harbor at Brunswick, Georgia, Cumberland Sound, Georgia; Darien, Georgia; Altamaha River, Georgia; Oetmulgee River, Georgia; of which $5,000 are to be expended between Macon and Hawkinsville, and the like sum below Hawkinsville, improving Oconee River, Georgia, of which $3,000 is to be expended between Millidgeville and the Central Railroad Bridge; improving Savannah River between Savannah and Augusta; improving Jekyl Creek,

improving Savannah River above Augusta, inside water route between Savannah, Georgia and Fernandina, Florida.

Judge-Advocate: Can you give me the date of the letter submitting the project for expenditure as to the Cumberland Sound improvement? C. S., page 412, what was the date?

A. August 30, 1894.

598 Q. What was the date of the approval of the project and expenditure. See C. S., N. H.

A. September 4, 1894.

Q. What was the date of submitting specifications and request to advertise?

A. August 30, 1894.

Q. What was the date of the approval of the specifications and authority to advertise?

A. Approved September 6, 1894.

Q. You have the approval there, what date was that received back, received here?

A. September 8, 1894.

Q. What was the date of the advertisement of the specifications?

A. August 29, 1894.

Q. When was the date of opening bids?

A. September 29, 1894.

Q. Was the first publication of those specifications made in the papers. No. When was the advertisement first placed in the papers calling for bids?

A. September 10.

Q. In what paper?

A. In the Savannah Morning News, Savannah, Ga., September 10; in the Times-Union, Jacksonville, Fla., September 10.

Q. When in the Engineering Record, New York?

A. September 15, and 22.

Q. When in the Engineering News, New York?

A. September 13, 20 and 27.

Q. Do you know when the specifications were received from the printer?

A. No, I cannot tell.

Q. Cannot you find any data there from which you can refresh your memory as to when they were received from the printer?

A. No, sir, I only see a letter from the Chief of En-
599 gineers that a 130 copies were forwarded to him on September 17.

Q. Have you the bill of the printer for those specifications?

A. Yes, sir, there must be a bill.

Q. Well, is it among these papers?

A. No, sir.

Q. Is it probably in your office here, the Engineer's office?

A. Yes, sir.

Q. You stated that the first advertisements for proposals were dated September 10, and that the bids were to be opened on September 29, was Captain Carter in Savannah at that time?

A. In September 29?

Q. September 10, when the advertisement first appeared?

A. I dont know.

Q. Look at C. S., page 424 and see if that will refresh your memory.

A. Captain Carter was in Baltimore, there is a letter to the Chief of Engineers (Handing letter book to Judge-Advocate).

Judge-Advocate: (Reading):

"United States Engineer Office,
Savannah, Ga., September 17, 1894.

Brig.-Gen. Thomas L. Casey,
Chief of Engineers, U. S. Army,
Washington, D. C.

General:

I have the honor to request approval of a journey made by me from Savannah, Georgia to Baltimore, Maryland and return, September 9-16, 1894, for the purpose of consulting with Colonel Craighill Division Engineer, concerning works of improvement at Cumberland Sound, Georgia.

Telegraphic authority was obtained from the Chief of Engineers for this journey, but time did not permit obtaining of regular orders.

The travel was necessary for the public service.

Very respectfully,
Your obedient servant,

O. M. CARTER,
Capt., Corps of Engrs., U. S. A.

600 Judge-Advocate: This letter is offered in evidence.

Judge-Advocate: Now turn to page 425.

A. That is a letter to the Chief of Engineers asking for approval of a journey.

Judge-Advocate: I now offer in evidence this letter:

"United States Engineer Office,
Savannah, Ga., Sept. 21, 1894.

Brig. Gen. Thomas L. Casey,
Chief of Engineers, U. S. A.,
Washington, D. C.

General:

I have the honor to request the approval of a journey made by me from Savannah, Georgia, to Fernandina, Florida, and return, September 17-18, 1894, for the purpose of making an examination of a reported change in the channel across the outer bar.

The exigency of the journey was such that antecedent authority could not be obtained from the Chief of Engineers.

The travel was necessary for the public service.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt., Corps of Engrs., U. S. A.

Q. Give the names of the parties and the dates of application for specifications, if you can, in response to this advertisement.

A. There is one letter to Messrs. E. B. Hunting & Co., dated September 21, 1894.

"Replying to your letter of the 20th instant, I have to inform you that plans and specifications for the Fernandina work can be seen at this office."

Judge-Advocate: This is C. S., page 426?

A. Page 426.

Judge-Advocate: Look at page 427.

601 Witness: (Reading)—

"United States Engineer Office,
Savannah, Ga., September 21, 1894.

Dr. C. N. Brandt,
Savannah, Georgia.

Dear Sir:—

Replying to your letter of the 20th instant, I have to inform you that plans and specifications for the Fernandina Work can be seen at this office, the necessary papers for submitting bids will be furnished to all those who will bid on the work.

Very respectfully yours,
O. M. CARTER,
Capt., Corps of Engrs., U. S. A."

Q. Is there any record to be found in your office of the names of parties who applied in person for specifications, and the number of copies furnished them?
A. There is one letter from E. B. Hunting & Company.
Q. You read that?
A. No, sir.
Q. All right.
A. (reading)

"Savannah. September 21, 1894.

Captain O. M. Carter, Corps of E., U. S. A.,
City.

Dear Sir:—

Your esteemed favor of this date;

We beg to say that we have called at your office and requested a copy of the specifications and blanks to bid on, and have been told that they could only be obtained from you in person; but that if we would leave a note for you the papers would be sent to us by mail. Will you kindly instruct your clerk to allow us to see the specifications and furnish us with the papers to bid on. Will call on Saturday morning.

Yours truly,

E. B. Hunting & Co.

Agnew.

602 Q. It was in response to that letter, I understand, you read from the book, was it not?
A. Yes, sir; No, sir.
Q. It was not?
A. No, sir.
Q. Then read the response to that, if you have it there?
A. There is no response to that.
Q. Look at C. S. 1, 11, 1894.
A. Will you kindly repeat the question.
Q. C. S., 11, 1894. I think you will find it there.
A. Yes, that's that letter of September 21, 1894.
Q. That's the one, read that.
Witness: (Reading:)
"Captain O. M. Carter, Corps of Engineers, Your esteemed favor of this date we beg to say that we have called at your office and requested a copy of the specifications and blanks to bid on and have been told—
Q. Is that the same one?
A. Yes, the same letter.
Q. That is all you find?
A. Yes, sir.

Q. Do you know Agnew?
A. Yes, sir.
Q. Now, have you any record of the parties who applied in person and the number of copies issued to them?
A. No, sir.
Q. There is no record to be found in your office of that?
A. No, sir.
Q. Have you the names of parties who received one copy of specifications?
A. No, sir.
Q. Were there any additional copies asked for by anyone?
A. There is no record in this book of it.
603 Q. Or in any book?
A. I don't know.
Q. Or the book that you have charge of, or have access to?
A. This is the Cumberland sound book, it is not in this book.
Q. It would be in this book if issued from this office, or should be.
A. Yes, sir.
Q. Where would you find the names of parties who returned specifications, if any were returned?
A. I would find them among the files of letters received if returned by letters transmitted.
Q. Have you found any so returned?
A. No, sir.
Q. Were any so returned?
A. I don't remember.
Q. Would you know it officially if they were so returned?
A. I might and might not.
Q. Would not there be some record in the office if returned?
A. They are returned without a letter of transmittal, which would be filed away, there would be no record.
Q. Any notation of any kind made?
A. No, sir.
Q. Look at page 431 to page 432.
A. Page 431 is a letter to the Chief of Engineers transmitting proposals received for constructing jetties at the entrance to Cumberland Sound with abstracts of the same.
Q. This is the letter forwarding the proposals. I offer it in evidence, and read:

"United States Engineer Office,
Savannah, Ga., September 29, 1894.

Big. Gen. Thomas L. Casey,
Chief of Engineers, U. S. A.,
Washington, D. C.

604 General:

I have the honor to transmit herewith all proposals received for constructing jetties at entrance to Cumberland Sound, Georgia, with abstract of same.

The prices bid by Ansom M. Bangs, of Fayetteville, N. Y., are lower than the work can be done for, but as Mr. Bangs is responsible, authority is requested to award the contract to him.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt., Corps of Engrs., U. S. A.

(4 enclosures.)

Judge-Advocate: And the abstract accompanying this letter is as follows, reading:

Abstract of Proposals for Constructing Jetties at Entrance to Cumberland Sound, Georgia, opened on September 29, 1894, by Capt. O. M. Carter, Corps of Engineers, U. S. A.:

Proposal No. 1, Ansom M. Bangs, Fayetteville, N. Y.: Mattresses per square yard $0.57; riprap stone per cubic yard $2.00; total $88,500.

Proposal No. 2, R. G. Ross and Co., Jacksonville, Florida; mattresses per square yard .85, riprap stone per cubic yard, $2.85; total $128,000.

Proposal No. 3, Rittenhouse Moore, Mobile, Alabama, mattresses per square yard, .90, riprap stone per cubic yard, $2.80; total $129,000.

Remarks: Amount available, $170,000.

"Bid recommended for acceptance, he being the lowest responsible bidder for the best and most suitable materials and service.

I hereby certify that the above Abstract of proposals is correct.

O. M. CARTER,
Capt., Corps of Engrs., U. S. A.
Savannah, Ga., Sept. 29, 1894.

605 Judge Advocate: I offer in evidence the three proposals referred to in the abstract, Anson M. Bangs, R. G. Ross & Company, Rittenhouse R. Moore. Copies will be attached to the record and marked "Exhibits 37, 38 and 39."

Judge-Advocate: I now offer in evidence the contract between O. M. Carter, Captain Corps of Engineers, U. S. A., of the one part and Anson M. Bahns, of Fayetteville, N. Y., of the other part for constructing jetties at entrance to Cumberland Sound. Approved November 23, 1894. Thomas L. Casey, Chief of Engineers. A copy of this will be attached to the record and marked "Exhibit 40".

Here the court at 2:45 o'clock p. m., adjourned until 11 o'clock a. m. tomorrow morning.

THOMAS F. BARR,
Col. and Asst. Judge Adv. Genl.
Judge-Advocate.

606 United States Court Room,
Savannah, Ga.,
January 27th, 1898.

Court met pursuant to its adjournment of yesterday at eleven o'clock a. m.

Present:

All the members of the Court and the Judge-Advocate.

The accused, his Counsel, and the Reporter, W. O. Tarver, were also present.

The President: The Court will come to order.

J. W. O. STERLY, a witness for the prosecution previously sworn, recalled to the stand.

Judge-Advocate: May it please the Court, I desire, and I trust there will be no objection to the course, to suspend the examination of this witness for a short time, in order to examine a witness who is about to be called away from the City.

Mr. Blair: We have no objections.

Judge-Advocate: We will excuse you, Mr. Sterly.

THOMAS, J. AGNEW, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by the Judge-Advocate.

Q. What is your full name?
A. Thomas J. Agnew.
Q. Where do you reside?
A. In Savannah.
Q. What is your business?
A. Lumber.
Q. In what business were you engaged in 1894?
A. Lumber business.
Q. Were you aware in 1894 of a call having been made by the Engineer Department for bids upon improve-
607 ments for Cumberland Sound?
A. Not until my attention was called to it by a friend.
Q. You became aware of it as a fact?
A. Yes, sir.
Q. Did you take any action upon that information?
A. At the request of my friend, I did.
Q. What was that action?
A. That I would get specifications for him to bid on the work.
Q. Did you obtain them?
A. I did.
Q. How did you obtain them?
A. I got them at Capt. Carter's office.
Q. Upon your first application?
A. No, sir.
Q. Please inform the Court as to the applications made, if more than one or two, and if any difficulty was encountered in procuring them?
A. I made application in person two or three times for the specifications.
Q. To Captain Carter?
A. No, sir.
Q. To whom?
A. I think Mr. Connolly.
Q. It was in the office of Capt. Carter?
A. In the office of Capt. Carter.

Q. Do you know if Capt. Carter was present in his office at that time?

A. I didn't see him.

Q. And you didn't, on those occasions, receive any specifications?

A. I did not.

Q. What course did you then pursue?

A. I then wrote Capt. Carter, requesting the specifications in the name of E. B. Hunting & Co.

608 Q. Were you connected with them at that time,—associated with them?

A. I was their agent.

Q. What response did you receive?

A. I received a letter.

Q. Have you that letter?

A. I have not.

Q. Do you know what has become of it?

A. I do not.

Q. Do you remember its contents? It was in your own possession?

A. In my own possession in the office of Hunting & Co.

Q. Is it on the files of Hunting & Co.?

A. That I am not prepared to say; I rather think it is.

Q. Did he enclose you a copy of the specifications in that letter?

A. He did not.

Q. Well, what next occurred?

A. I wrote a second letter requesting the specifications, and stated the fact that I had experienced a great deal of trouble in getting them, and had been unable to get them, and understood that they could only be obtained from him in person.

Q. Did you receive a reply to that communication?

A. I think not.

Q. How did you finally secure the specifications?

A. In the second communication which I addressed to Capt. Carter, I stated that I would call on Saturday for specifications, which I did, and I got them.

Q. Had you made any other efforts to secure these specifications?

A. I had.

Q. What?

A. By requesting a friend of mine, my family physician, Dr. Brandt, to get the specifications for me.

Q. Did he get them?
A. He did not.
Q. Did you have any conversation with Capt. Carter in regard to the requirements of the specifications?
609 A. I did not.
Q. For whom were you really acting in the premises?
A. Ross & Co., of Jacksonville, Fla.
Q. Were you present when the bids were opened?
A. I was.
Q. Did you put in a bid?
A. I did.
Q. Whose was it?
A. Ross & Co., Jacksonville, Fla.
Q. How long before the bids were opened did you put it in?
A. About five minutes to twelve o'clock.
Q. Do you remember who were present at the time of the opening of the bids?
A. Two Mr. Gaynors, Mr. Moore and myself.
Q. Do you know Mr. Moore's first name?
A. I understand it to be Rittenhouse.
Q. Do you know the names of the two Gaynors?
A. I know one is John and the other is Edward.
Q. Did anyone speak to you about the bids before the opening?
A. Yes, sir.
Q. Who was it?
A. Both John and Edward Gaynor.
Q. What conversation did you have with them?
Mr. Blair: I object. Capt. Carter is not shown to have been present and heard the statement, and the Gaynors are not on trial in this Court. To attempt to bind Capt. Carter by declarations made in the presence of these men by a third party—
Judge-Advocate: I submit that the declarations of any of these parties named as co-conspirators are competent evidence.
Q. (Judge-Advocate continuing) I will ask the witness if Capt. Carter was present in the room?
A. He was not.
610 Q. It was not in the room where the bids were opened that the conversation occurred?

A. He was in the room where the bids were opened, but not in the room where the conversation occurred.

Q. Where did the conversation take place?

A. In the outside office and in the hall or landing.

Judge-Advocate:—I submit the case to the Court. I do not think it requires argument.

* * * * *

The Court: The Court will retire.

611 (The members of the court then, at 11.14 a. m., withdrew to an adjoining room, and the court was closed, after which, at 11.25 o'clock a. m., the members of the court resuming their seats, the court was opened, and the president, in the presence of the accused, his counsel, the Judge Advocate and the reporter, announced:)

The decision of the Court is that the objection is not sustained.

Judge-Advocate (Addressing the witness) You will answer the question.

A. Ed. Gaynor asked me if I was going to put in a bid for the work, to which I said "Yes." He then wanted to know if E. B. Hunting & Co. were bidding on the work, to which I replied "No.", and he then continued to question me, to find out who the bid was from, which information I did not give him. After a conversation of five to ten minutes with him, John Gaynor appeared, and also questioned me as to who the bid was from, which I refused to tell him, and Ed. Gaynor then said to me that I was doing him an injustice; that my party would not get the contract, and again requested me to withdraw the bid, as I would only cause them to lose money. This conversation with the two Gaynors lasted from ten to fifteen minutes, when Ed. Gaynor made me a proposition to give me $500 if I would not put the bid in, which I refused to accept, telling him that my instructions were to put the bid in.

Q. That was within the half hour prior to the opening of the bids?

A. Yes, sir.

Q. What next happened?

A. The Gaynors then stepped off and held some conversation, when I was again approached by Ed Gaynor, asking me not to put in the bid, which I again refused to do, and he walked to Capt. Carter's desk, took up an envelope from the desk and substituted another.

Q. How long before the opening of the bids was that?
612 A. About five minutes to twelve o'clock.
Q. About the time you put in your bid?
A. After he removed the envelope and substituted another, I placed my bid on top.
Q. Capt. Carter was there at the desk?
A. Capt. Carter was in the room.
Q. He was in the room where this desk was?
A. Yes, sir.
Q. Can you recall all who were present at the opening of the bid?
A. Capt. Carter, Ed and John Gaynor, Rittenhouse Moore, myself and I think, one or two others whom I did not know.
Q. Any of the employes of the engineer office?
A. Not that I remember.
Q. How many bids were opened?
A. Three.
Q. Was there any bid from either of the Gaynors?
A. No, sir.
Q. Can you recall what bids were opened?
A. Bid of Rittenhouse Moore, Ross,—Bangs & Co.
Q. Do you know Mr. Bangs?
A. I do not.
Q. You don't know whether he was there or not?
A. I do not.

Cross-Examination by Mr. Charlton.

Q. As I understand your testimony, you did not want these specifications for yourself, but for Messrs Ross & Sons, Fernandina?
A. Ross & Co. of Jacksonville.
Q. So soon as you saw Capt. Carter, he gave you a copy of them?
A. I never saw Capt. Carter.
Q. When you went to the office the second time, you got a copy?
A. No, sir.
Q. The third time?
613 A. No, sir.
Q. Which time?
A. After I had written two letters, requesting the specifications.
Q. They were sent to you through the mail?

A. They were not.
Q. How did you get them?
A. I got them in Capt. Carter's outside office.
Q. Did you send them to Ross & Co.?
A. I did not.
Q. Ross was a bidder however?
A. Yes, sir.
Q. So he got the specifications somewhere?
A. Yes, sir.
Q. What did you do with your copy?
A. Mailed them to W. D. Barnett of Jacksonville, who I understood was a partner of Ross & Co.
Q. None of this conversation which you have detailed here as occurring with the Gaynors, occurred in Capt. Carter's presence or hearing, did it?
A. No, sir.
Q. And as a matter of fact, when Gaynor had put in the bid which he had in his hand, the last bid, he put it in before you put in yours?
A. Yes, sir.
Q. He substituted one bid for another, and he put in his bid before you put in yours?
A. Yes, sir.
Q. And he was so anxious to get you out of the way, that he offered you $500?
A. He offered me $500.
Q. You put in the bid for another man?
A. For Ross & Co.
Q. And Gaynor seems to have put in a bid for another man?
614 A. He put in a bid, but whether the bid was for another man, I cannot say.
Q. You were there when the envelopes were opened, was his, Gaybor's, among them?
A. No, sir.
Q. And that is about all there is to it that you know?
A. Yes, sir.

Re-direct Examination by the Judge Advocate.

Q. This is the contract of 1894, I think you testified, is it not?
A. Yes, sir.

Q. You know who received the contract, who was the successful bidder?
A. Bangs & Co.
Q. Bangs & Co., or Bangs alone?
A. Bangs is the name I remember.
Q. You do not remember whether Bangs was the firm name or an individual name?
A. No, sir.

JOHN W. O. STERLY, a witness for the prosecution, previously sworn, recalled.

Judge-Advocate: May it please the Court, there was some little misunderstanding yesterday and a confusion of both the counsel and my self in relation to a communication, dated Sept. 17, asking for authority on the part of the accused to advertise, while it appeared from other correspondence that on a previous day he had been instructed to re-advertise, and that it was apparently in compliance with those instructions that he had advertised the previous day or asked for authority the previous day. I have here from the office of the Chief Engineer this letter:

615 "Office of Chief of Engineers,
Washington, D. C., Aug. 20, 1892.

Capt. O. M. Carter,
Corps of Engineers,
Richfield Springs, N. Y.

Captain:—

I have to furnish for your information the accompayning copy of your letter of 17th, inst., with the indorsements thereon, relative to advertisement and specifications for work at Savannah Harbor, Georgia. You will please return the two inclosures handed to you in this office August 20th." (That is the same date showing Capt. Carter was there then.)

"Very respectfully,
Your obedient servant,
H. M. ADAMS,
Maj. Corps of Engrs. in charge."

Upon that original letter the statement of the account for advertising is made for audit in the War Department. The following is the letter from Capt. Carter:—

Subject, Authority for advertising and printing.

United States Engineer Office,
Savannah, Ga., Aug. 17, 1892.

"The Chief Clerk of the War Dept.
Washington, D. C.

(Through the Chief of Engineers, U. S. A., Washington, D. C. and Col. Wm. P. Craighill, Corps of Engrs., U. S. A., Engr. S. E Division, Baltimore, Md)

Sir:—

I inclose herewith a copy of an advertisement, inviting proposals for improving Savannah Harbor, Georgia, and request authority to publish the same in the following official newspapers:

616 6 insertions in Savannah Morning News,
6 insertions in Charleston News and Courier,
6 insertions in Jacksonville Times-Union,
3 insertions in New York Engineering News,
3 insertions in New York Seaboard.

I also request authority to print 250 copies of accompanying specifications.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. Corps of Engrs., U. S. A."

(2 Enclosures.)

1st— indorsement,
Office Chief of Engineers,
U. S. Army,
Aug. 20, 1892.

Respedtfully submitted to the Secretary of War, with recommendation that these specifications be approved, and that the work at Savannah Harbor be carried on under the same after due advertisement and execution of contract.

If the specifications are approved it is also recommended that the within request for authority to publish advertisement and print specifications be granted.

H. W. ADAMS,
Major Corps of Engineers, In charge.

2d, indorsement.
The specifications are approved.
By order of the Acting Secretary of War,
John Tweedale,
Chief Clerk.
War Dept.
Aug. 20,/'92.

617 3rd, Indorsement.
War Department,
Aug. 20, 1892.
Approved as amended.
L. A. Grant,
Acting Secretary of War."

The Court: What is the date of that application?

Judge-Advocate: August 17, per impression.

I think this we read in evidence before, but the last telegram I will read and the accompanying letter:—

"Washington, D. C., Aug. 27, 1892.

To Capt. Carter, Southern Bank Bld.,
Savannah, Ga.

"Secretary of War has authorized change in specifications for Savannah Harbor, as recommended in your letter of August twenty-four.

H. M. Adams,
Engineers."

Accompanying this is the following communication:—

"Washington, D. C., Aug. 29, 1892.

"Capt. Carter,
Sir:—

* * * * *

Your telegram of this morning is received. The specifications were shipped on Saturday.

Yours truly,
Gibson Bros."

That appeared before in evidence, but I thought it well to read them at this time, to make this connected story.

Q. (Continuing examination) Now, will you show me the letter book in which that letter is copied?

A. The copy book was left in the office.

Judge-Advocate: I will ask the Court to take a re-
618 cess while the witness gets the book.

The Court:—The Court will take a recess of five minutes.

(At 11.41 o'clock A. M. the Court took a recess until 11.48 o'clock a. m., when the witness returned with the letter book referred to, and handed it to the Judge-Advocate.

Q. (The Judge-Advocate continuing the examination) This is the letter dated Aug. 17, 1892, from Capt. Carter to the Chief Clerk of the War Department to which you referred?

A. Yes, sir.

Judge-Advocate:—This is the original of the letter, a copy of which was inclosed by the Chief of Engineers to Capt. Carter and which I have just read to the Court. It bears date of August 17, 1892, but it follows in the impressions in the official copy book here papers, of which impression was taken, dated Aug. 18, 1892,—quite a number. I presume the Court takes my statement for that. If they desire to examine the book, they will see that the impression follows communications of the 18th; and it is now perfectly apparent that it is the original paper on which authority was granted, and that no other was written upon that subject, and the fact of the antedating, or confusion of dates, seems to have escaped the rigid scrutiny of the Department in Washington.

Q. Look at G. R., 13, 1892; the date of the River and Harbor Act?

A. That is a letter from the office of the Chief of Engineers to Capt. Carter.

Q. Does it show the date of the act making appropriation for improvements of rivers and harbors?

A. Yes, sir.

Q. What is the date?

A. July 13, 1892.

Q. Turn to the paragraph, relative to Jekyl Creek and water-way.

A. "Improving Jekyl Creek, Ga.; continuing improvement, $7,500. Inside water route between Savannah, Ga.,
619 and Fernandina, Fla., $15,000."

Q. When were the projects of expenditure called for.

A. July 14, 1892.

Q. Let me see J. C., page 314?

A. (Witness hands Judge-Advocate the letter book)

Q. What is that?

A. It is the project of expenditure for Jekyl Creek, Ga.

Q. What date?

A. July 28, 1892.

Q. By whom is it signed?

A. By Capt. O. M. Carter.

Q. And addressed to the Chief of Engineers?
A. Addressed to the Chief of Engineers.
Q. Look at J. C. N. 1, what is that?
A. Letter from Capt. Carter to the Chief Clerk of the War Department under date Jan. 9, 1893, submitting advertisements and specifications for Jekyl Creek and inside water route.
Q. Do you find the date of the letter approving the project of expenditure,—what date was that you just read?
A. Jan. 9, 1893.
Q. That is not the paper. Look and see if there is anything further in there as to approving the project of expenditure?
A. No, sir; there is nothing in that paper but the approval of the specifications.
Q. What date were they approved?
A. Approved by the War Department, Jan. 13, 1893.
Q. What was approved that date?—Look and see what communication you are reading.
A. That is the approval of the specifications,—approval of authority to print the specifications and to advertise.
Q. That was Jan. 13—?
A. January 13th.
Q. And what was the date of application for it?
620 A. January 9, 1893.
Q. What was the date of the advertisement and specifications?
A. January 7, 1893 was the date of the advertisement.
Q. What was the date of the opening of the bids?
A. February 7, 1893.
Q. Look at J. C., page 36, and tell me when that advertisement first appeared and how many times in the Engineering and Building Record of New York?
A. Engineering and Building Record twice, Jan. 21 and 28, 1893.
Q. And in the Seaboard, New York?
A. January 19 and 26, 1893.
Q. In the Morning News, Savannah?
A. Jan. 18, 19, 20, 21, and Feb. 5 and 6.
Q. Brunswick Times, Brunswick?
A. Jan. 18, 19, 20, 21, Feb. 5 and 6, 1893.
Q. Can you tell when these specifications were received from the printer?
A. No, sir.

Q. What was the date of the first issue of the specifications?

A. Jan. 26, 1893.

The following papers were identified by the witness and offered in evidence and read by the Judge-Advocate:

File J. C. 2.

"American Dredging Co.
Office 234 Walnut St.,
Philadelphia, Pa., Jan. 23, '93.

"O. M. Carter,
Capt. of Engineers, U. S. A.,
Savannah, Ga.

Sir:—

Will you please be kind enough to send me copy of specifications for improving Jekyl Creek and the inside water route between Savannah, Ga., and Fernandina, Fla., as per
621 your advertisement of Jan. 7, 1893, and oblige,

Yours very respectfully,

FLOYD H. WHITE,
Secretary."

Letter Book, J. C., Page 42.—1893
Subject, Specifications, Improving Jekyl Creek, etc.,
United States, Engineer Office.
Savannah, Ga., Jan. 26, 1893.

Mr. Floyd H. White,
Secretary American Dredging Co.,
234 Walnut St., Philadelphia, Pa.

Dear Sir:—

In compliance with request contained in your letter of the 23rd, instant, I send you herewith one copy of the specifications for improving Jekyl Creek, Georgia and Inside Water Route, between Savannah, Georgia, and Fernandina, Fla.

Please consider the specifications carefully, and if you desire to bid upon the work, I shall take pleasure in showing you over the same, giving you all the available information concerning it and furnishing you with the two remaining copies of the specifications necessary to enable you to submit your bid. If you do not intend to bid, please return the inclosed specifications.

Very respectfully,
Your obedient servant,

O. M. CARTER,
Capt. Corps of Engrs. U. S. A.

(One enclosure.)

File J. C. 3.—1893

"Charleston, S. C., Jan. 23, 1893.

Captain O. M. Carter,
Savannah, Georgia.

Dear Sir:—

Please send to me specifications and blank proposal
622 for improving Jekyl Creek, Geo., and inside water route tween Savannah, Geo. and Fernandina, Fla.

Your most obedient,
COLIN McK. GRANT.

143 Rutledge Avenue, Charleston, S. C."

Letter Book, J. C., Page 43.—1893

Subject, Specifications Jekyl Creet, etc.

United States Engineer Office,
Savannah, Ga., January 26, 1893.

Mr. Colin McK. Grant,
143 Rutledge Avenue,
Charleston, S. C.

Dear Sir:—

In compliance with request contained in your letter of the 23rd, instant, I send you herewith one copy of the specifications for improving Jekyl Creek, and Inside Water Route between Savannah, Georgia and Fernandina, Florida.

Please consider the specifications carefully, and if you desire to bid upon the work, I shall take pleasure in showing you over the same, giving you all the available information concerning it, and furnishing you with the two remaining copies of the specifications necessary to enable you to submit your bid. If you do not intend to bid, please return the enclosed specifications.

Very respectfully,
Your obedient servant,
O. M. CARTER.
Capt. Corps on Engrs., U. S. A.

(One enclosure)"

Judge Advocate:—To this party there appears to have been sent January 28, 1893, two additional copies of the specifications.

623 File, J. C. 4.—1893

"Dear Sir:—

Please forward proposal blanks for River Work, as per

your adv. Jan'y 7th, Jekyl Creek, &c., and inside water route between Savannah and Fernandina.

Respecty yours,
JOHNSTON & TOWNSEND,
Somers Point, N. J.,
1, 23, '93.

A. H. M."

Letter Book, J. C., Page 40.—1893
Subject, Specifications, improving Jekyl Creek, etc.

United States Engineer Office,
Savannah, Ga., January 26, 1893.

Messrs Johnston & Townsend,
Somers Point, N. J.

Dear Sirs:—

In compliance with request contained in your postal of 23rd, instant, I send you herewith one copy of the specifications for improving Jekyl Creek, Georgia, and Inside Water Route, between Savannah, Georgia and Fernandina, Florida.

Please consider the specifications carefully, and if you deside to bid upon the work, I shall take pleasure in showing you over the same, giving you all the available information concerning it and furnishing you with two remaining copies of the specifications, necessary to enable you to submit your bid. If you do not intend to bid, please return the enclosed specifications.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. Corps of Engrs. U. S. A.

(One enclosure.)

624 Judge-Advocate:—R. Moore & Co. of Mobile, appear to have had three specifications sent them on Jan. 26th—.

Judge-Advocate continues to offer identified papers in evidence as follows:—

File J. C.—6 1893
"Virginia Dredging Co.,
C. P. E. Burgwyn, Pres.
Richmond, Va., Jan. 21, 1893.

Capt. O. M. Carter,
Corps of Engineers,

Capt.:—

You will confer a favor on me by letting me have copies of specifications and forms of proposals for work on improv-

ing Jekyl Creek and inside water route, to be opened Fab. 7th, 1893.

Very respectfully.
C. P. E. BURGWYN."

Letter Book, J. C. 2, Page 41.—1893
Subject, Specifications, improving Jekyl Creek, etc.
United States Engineer Office,
Savannah, Ga., January 26, 1893.

Mr. C. P. E. Burgeyne,
President Virginia Dredging Co.,
Richmond, Va.

Dear Sir:—
In compliance with request contained in your letter of the 21st, instans, I send you herewith one copy of the specifications for improving Jekyl Creek, Georgia, and Inside Water Route, between Savannah, Georgia and Fernandina, Florida. Please consider the specifications carefully, and if you desire to bid upon the work, I shall take pleasure in showing you over the same, giving you all the available information concerning it, and furnishing you with the two remaining copies of the specifications necessary to enable you to submit
625 your bid. If you do not intend to bid, please return the enclosed specifications.

Very respectfully,
Your obedient servant,
O. M. CARTER.
Capt. Corps of Engrs. U. S. A.

(One enclosure.)

File J. C. 8, 1893.
Vincennes, Ind., Jan. 28, 1893.

Mr. O. M. Carter,
Savannah, Ga.

Dear Sir:—
Will you send us specifications, and what information you can well, in regard to the improving of Jekyl Creek and other improvements that is to be let Feb. 7th.

Very respectfully,
L. T. HARDING & SONS.

Letter Book, J. C. Page 52.
Subject, Specifications, Jekyl Creek, Ga.

United States Engineer Office,
Savannah, Ga., Feb. 3, 1893.

Messrs L. T. Harding & Sons,
Vincennes, Ind.

Dear Sirs:—

In compliance with request contained in your letter of 28th ult., just received, I send you herewith one copy of the specifications for improving Jekyl Creek, Georgia, and Inside Water Route between Savannah, Georgia, and Fernandina, Florida.

Please consider the specifications carefully, and if you desire to bid upon the work, I shall take pleasure in showing you over the same, giving you all the available information concerning it and furnishing you with the two remain-
626 ing copies of the specifications necessary to enable you to submit your bid.

Very respectfully,
Your obedient servant,
O. M. Carter,
Capt. Corps of Engrs. U. S. A.

(One enclosure.)

Judge-Advocate:—Of those who made written application, four received one copy of the specifications, one received one copy and two additional copies. To one a full set of three was sent.

(The following replies to oral requests were identified by the witness and read in evidence by the Judge Advocate.):

Letter Book, J. C., 1893, Page 44.
Subject, Specifications. Improvement Jekyl Creek, etc.

United States Engineer Office,
Savannah, Ga., Jan. 26, 1893.

Mr. Chas. C. Ely,
Savannah, Ga.

Dear Sir:—

In compliance with your oral request, I send you herewith one copy of the specifications for improving Jekyl Creek Georgia, and Inside Water Route between Savannah, Georgia and Fernandina, Florida.

Please consider the specifications carefully, and if you deside to bid upon the work I shall take pleasure in showing you over the same, giving you all the available information concerning it and furnishing you with the two remaining cop-

ies of the specifications necessary to enable you to submit your bid.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Corps of Engrs. U. S. A.

(One enclosure.)

627 Letter Book, J. C. IX, 1893, Page 46.

"Subject: Specifications; Improving Jekyl Creek, Ga.

"United States Engineer Office,
Savannah, Ga., Jan. 26, 1893.

"Mr. Jacob Paulsen,
President Savannah Dredging Co.
Savannah, Ga.

"Dear Sir:

In compliance with your oral request, I send you herewith three copies of the specifications for improving Jekyl Creek, Georgia, and Inside Water Route, between Savannah, Georgia, and Fernandina, Florida.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. Corps of Engrs. U. S. A.

(Three Enclosures.)"

Letter Book, J. C. IX, Page 47.

"Subject: Specifications, Improving Jekyl Creek, etc.

"United States Engineer Office,
Savannah, Ga., Jan. 26, 1893.

"Col. John F. Gaynor,
President The Atlantic Contracting Co.,
St. James Hotel, Washington, D. C.

"Dear Sir:

In compliance with your oral request, I send you herewith three copies of the specifications for improving Jekyl Creek, Georgia, and Inside Water Route, between Savannah, Georgia, and Fernandina, Florida.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. Corps of Engrs. U. S. A."

(Three enclosures.)"

628 Letter Book, J. C. IX, 1893, Page 48.
Subject, Specifications Improving Jekyl Creek, etc.

United States Engineer Office,
Savannah, Ga. Jan. 26, 1893.

Col. John F. Gaynor,
President The Atlantic Contr. Co.
Hoffman House, New York, N. Y.

Dear Sir:—

In compliance with your oral request, I send you herewith three copies of the specifications for improving Jekyl Creek, Georgia and Inside Water Route between Savannah, Georgia, and Fernandina, Florida.

Very respectfullv.
Your obedient servant,
O. M. CARTER.
Capt. Corps of Engrs. U. S. A.

(Three enclosures)

Letter Book, J. C. IX, 1893, Page 50

Subject, Specifications Improving Jekyl Creek and Inside Route.

United States Engineer Office,
Savannah, Ga. Jan. 24, 1893.

Mr. R. G. Ross,
Jacksonville, Fla.

Dear Sir:—

In compliance with your oral request, I send you herewith one copy of the specifications for improving Jekyl Creek, Georgia and Inside Water Route between Savannah, Georgia and Fernandina, Florida.

Please consider the specifications carefully and if you desire to bid upon the work, I shall take pleasure in show-
629 ing you over the same, giving you all the available information concerning it and furnishing you with the two remaining copies of the specifications necessary to enable you to submit your bid.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. Corps of Engrs. U. S. A.

(One enclosure.)

Judge-Advocate: I offer in evidence and read papers that have been identified by the officer from the Engineer Office, as follows:

Subject, Proposals for Improving Jekyl Creek, Ga., and Inside Water Route.

United States Engineer Office,
Savannah, Ga., Feb. 7, 1893.

Brig. Gen. Thomas L. Casey,
Chief of Engineers, U. S. A.
Washington, D. C.

General:—

I have the honor to transmit herewith all proposals received for improving Jekyl Creek, Georgia, and Inside Water Route between Savannah, Georgia, and Fernandina, Florida, with abstract of same, and authority is requested to award the contract to The Atlantic Contracting Company, of New York, N. Y., the lowest responsible bidders, the prices being deemed reasonable.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. Corps of Engrs. U. S. A.

(Three enclosures.)

630 Judge-Advocate:—The abstract referred to and copy of advertisement referred to, dated Jan. 7, 1893. Abstract of proposals for improving Jekyl Creek, Ga., and Inside Water Route between Savannah, Ga., and Fernandina, Fla., opened on Feb. 7, 1893, by Capt. O. M. Carter, Corps of Engineers, U. S. A. The Atlantic Contracting Company, New York, N. Y., John F. Gaynor, President, bid 99 cents per square yard on mattresses, amount, $8,910 for 9,000 square yards; on rip-rap stone, 3,000 cubic yards, $3.59 per cubic yard, amount $10,770; total, $19,680. Colin McK. Grant, Charleston, S. C., on mattresses, 9,000 square yards, price bid $1.25 per square yard, amount, $11,250; on rip-rap stone, 3,000 cubic yards, $3.70 per cubic yard, amount $11,100, total amount, $22,350. Remarks: Amount available, $21,000. Bid recommended for acceptance, they being the lowest responsible bidders for the best and most suitable materials and services,—that referring to the Atlantic Contracting Company. And at the bottom of the abstract, "I hereby certify that the

above abstract of proposals is correct. O. M. Carter, Capt. Corps of Engrs, U. S. A.

Savannah, Ga., Feb. 7, 1893."

I submit the two proposals referred to in the abstract in evidence, and copies of the same will be attached to the record, marked, Exhibit No. 41, and Exhibit No. 42. I also offer in evidence contract entered into on March 1, 1893, between O. M. Carter, Capt. Corps of Engrs., U. S. A., of the one part and The Atlantic Contracting Co., of New York, of the other part, for constructing training wall in Jekyl Creek, Ga., and Inside Water Route between Savannah and Fernandina, and copy of this will be attached to the record, marked Exhibit No. 43.

Q. (Examination continued) Have you the report of operations, from the records of the office, for May, 1893?

631 A. For which work?

Q. Work at Fernandina?

A. Yes, sir. (handing the Judge-Advocate the paper)

Judge-Advocate:—This is a report of operations during the month of May, 1893. I offer it in evidence and read it as follows: "Property has been cared for and necessary office work executed.

"Jetty work, under the existing contract with Mr. Edward H. Gaynor, has been continued during the month until May 19th, when the funds availale for the work were exhausted.

"The first and second courses of the north jetty were advanced 587.5 feet by double mattresses, reaching a point 17,416.5 feet from the initial point, measured on the axis of the jetty. The second course was also advanced a distance of 165.1 feet from a point 13,641.2 to a point 13,806.3 feet from the initial point. There were used in this work during the month 14,116.16 square yards of brush mattresses, and 2,005.56 cubic yards of rip-rap stone.

Probable Operations During Next Month.

To care for property, execute miscellaneous office work, and make the annual examination.

Respectfully submitted,

O. M. Carter,

Capt. Corps of Engrs. U. S. A.

Savannah, Ga., June 10, 1893."

I omitted to state to the Court in submitting the contract of March 1st, just put in evidence, that it has the usual ap-

proval. It is approved April 17, 1893, by Thomas Lincoln Casey, Brig. Gen., Chief of Engineers.

Q. (Examination continued) On this contract, approved April 13, when did the work begin, do you know?

632 A. Work began on the 24th, of May, 1893.

Q. You read over the paper; is that the paper?

A. That is the report of operations.

Q. Signed by whom?

A. Signed by E. R. Conant, Inspector.

Q. Addressed to whom?

A. Capt. Carter.

Q. And is found in the official records of the office?

A. Yes, sir.

Q. Have you the report of operations also showing that?

A. (Handing the Judge-Advocate the paper) Yes, sir. That does not show the date.

Q. This does not show the date?

A. No, sir.

Judge-Advocate: This is the report of operations during the month of May, 1893:

"Property has been cared for, miscellaneous office work executed and jetty work, under contract with The Atlantic Contracting Company has been commenced.

There were placed in the Jekyl Creek jetty (see report on Inside Water Route between Savannah and Fernandina) in the first course 1,712.58 square yards of brush mattresses; in the second course, 829.89 square yards, and in the third course 829.89 square yards, making in all 3,372.36 square yards of brush mattresses, from 22 to 44 feet wide, which were loaded with 94.28 cubic yards of rip-rap stone. The first course was thereby advanced 354.1 linear feet, and the second and third courses 338.5 linear feet each.

Probable Operations During Next Month.

To care for property, execute miscellaneous office work, make annual survey, and complete jetty work under contract with The Atlantic Contracting Company.

Respectfully submitted,

633 O. M. Carter,
Capt. Corps of Engrs. U. S. A.

Savannah, Ga., June 10, 1893."

Q. Look at G. R., 25, 1894?

A. It is a letter from the Chief of Engineers to Capt. Carter, dated Aug. 20, 1894, notifying him of the passage of

the River and Harbor Bill, and the Act of Aug. 17, 1894, and requests him to submit projects of expenditure.

Q. For what improvements?

A. For improving harbor at Brunswick, Ga.; for maintenance $10,000. Improving Cumberland Sound, Ga.,: continuing improvement, $170,000

Q. What appropriation was made for improving the Altamaha river, Jekyl Creek and the Inside Route?

A. Improving Altamaha river, $10,000; improving harbor at Darien, Ga., $25,000; improving Jekyl Creek, Ga.; continuing improvement, $4,000; Inside Water Route between Savannah and Fernandina: continuing improvement, $20,000.

Q. Look at A. R., Page 175; what is that?

A. That is a letter from Capt. Carter to the Chief of Engineers, under date of August 30, 1894, submitting project of expenditure for Altamaha River, Ga.

Q. Look at page 150, D H.; what is that?

A. Letter from Capt. Carter to the Chief of Engineers, under date of August 31, 1894, submitting project for expenditure of $25,000 for improving harbor at Darien.

Q. Look at J. C., 96; what is that?

A. That is a letter from Capt. Carter to the Chief of Engineers, under date of Oct. 1, 1894, submitting project for the expenditure of $4,000 for improving Jekyl Creek.

Q. Look at Waterway, 14; what is it?

634 A. Letter to the Chief of Engineers, under date of October 1, 1894, submitting project for expenditure of $20,000, for improving Inside Water Route between Savannah, Ga., and Fernandina, Fla.

Q. What was the date of the letter approving project for expenditure for Altamaha river? A. R. 9, you will find it.

A. September 4, 1894.

Q. What was the date of approval of project of expenditure for Darien harbor?

A. September 6, 1894.

Q. What was the date of letter approving project of expenditure for Jekyl Creek?

A. October 6, 1894.

Q. What is the date of letter approving project of expenditure for the Water-way?

A. October 5, 1894.

Q. Were specifications submitted separately for these improvements?

A. No, sir.
Q. Or in combination?
A. In combination.
Q. Look at A. R., page 179; does that refer to the Act of Congress, under which authority for making such combination is found?
A. Yes, sir.
Q. What date is that?
A. March 2, 1895.
Q. Look at A. R., 1, 1895; what is that?
A. A. R., 1, 1895, is a letter from Capt. Carter to the Chief of Engineers, in which he requests authority to advertise and print specifications. This bears approval, dated March 1, 1895.
Q. What is the date of his request?
A. March 2, 1895.
Q. Did you find the date of that Act? The River and Harbor Act of what year conferred that authority to make combination?
635 A. It was either the Act of 1890 or the Act of 1892 which gives authority to combine specifications.
Q. Some years prior to this contract?
A. Yes, sir.
Q. What was the date of the advertisement and specifications?
A. March 2, 1895.
Q. What was to be the date of the opening of the bids?
A. April 6, 1895.
Q. When did that advertisement first appear in the Morning News of Savannah?
A. On March 14, 1895.
Q. When in the Times of Brunswick?
A. On March 14th.
Q. How many times?
A. Six times.
Q. How many times in the News?
A. Six times.
Q. When and how many times did it appear in the Engineering News, New York?
A. Twice.
Q. What dates?
A. March 21st and 28th, 1895.
Q. When in the Marine Journal of New York?
A. March 23, 1895.

Q. On that day alone?
A. On that day alone.
Q. Can you tell when the specifications were received from the printer?
A. No, sir.
Q. Can you tell when the specifications were first issued?
A. Yes, sir.
Q. Give me the first date on which the sepcifications were issued.
A. March 22, 1895.

636 Judge-Advocate: Here is a list of applicants for specifications pertaining to the improvements of the Altamaha River, Darien Harbor, Jekyl Creek, and the Inside Water Route between Savannah, Ga., and Fernandina, Fla., in which, so far as the specifications appear to have been sent to any parties, they each received three,—a full set. There are nine. P. Sanford Ross, R. H. McWilliams & Co., Virginia Dredging Co., American Dredging Co., Venable Bros., C. I. McDonald & Co., H. Davin, and Geo. O. Tenney, and, while Cordes & Bochman appear to have been bidders, there is no record of their having received any specifications, but they must have received three. There is no record of Chas. G. Smith & Son having received any,—that was from Washington, D. C. P. Sanford Ross, Savannah, Ga., R. H. McWilliams & Co., Chicago, Ill., Virginia Dredging Co., Richmond, Va., American Dredging Co., Philadelphia Pa., Venable Bros., Atlanta, Ga., C. Irwin McDonald & Co. Pittsburgh, Pa., H. Davin, Columbia, Va., Geo. O. Tenney, Chattanooga, Tenn., Cordes & Bochman, Charleston, S. C., Chas. G. Smith & Son, Washington, D. C., Elton A. Smith, Savannah, Ga., and the Savannah Dredging Co., Savannah, Ga., and the Atlantic Contracting Co., Savannah, Ga., and that covers that list. I neglected to state that the Atlantic Contracting Co. received three, and April 10th was the date on which all those requests to return unused copies was sent. From March 22nd up to March 29th were the days the specifications were sent out in sets of three.

I offer in evidence and read:

"Subject: Proposals for Improving Altamaha River, Darien Harbor, etc.

United States Engineer Office,
Savannah, Ga., April 6, 1895.

Brig. Gen. Thomas L. Casey,
Chief of Engineers, U. S. Army,
Washington, D. C.

General:

I have the honor to transmit herewith all proposals received together with abstract of same, for improving Altamaha River, Georgia; Darien Harbor, Georgia; Jekyl Creek, 637 Georgia, and Inside Water Route between Savannah, Geogia, and Fernandina, Florida, and authority is requested to award the contract to Wm. T. Gaynor, Fayetteville, New York, the lowest responsible bidder, the prices being deemed reasonable.

Very respectfully,
Your obedient servant,
O. M. Carter,
Capt., Corps of Engrs., U. S. A.

(4 enclosures)"

Abstract of proposals for improving Altamaha River, Darien Harbor, Jekyl Creek and Inside Water Route between Savannah, Ga., and Fernandina, Fla., opened on April 6th, 1895, by Capt. O. M. Carter, Corps of Engineers, U. S. A. First, Cordes & Bochman, Charleston, S. C., bid on mattresses per sq. yard, $1.20; fascines per cubic yard $1.75; Pile work per linear foot $1.60; fender piles per cluster, $75.00; tie piles per group $25.00; Sawn timber per 1,000 feet $30.00; iron bolts per lb. 5c; riprap stone per cubic yard $3.25; aggregate $52,625.00. Second Chas. C. Ely, Savannah, Ga., bid on mattresses $1.28 per sq. yard; fascines per cubic yard $1.85; pile work per linear foot $1.75; fender piles per cluster $60.00; tie piles per group $25.00; sawn timber per 1,000 feet $30.00; iron bolts per lb. 6c; riprap stone per cubic yard $4.00; aggregate $59,425.00. Third Wm. T. Gaynor, Fayetteville, N. Y., bid on mattresses per square yard $1.00; fascines per cubic yard $1.65; pile work per linear foot $1.50; fender piles per cluster $50.00; tie piles per group $20.00; sawn timber per 1,000 feet $25.00; iron bolts per lb. 5c; riprap stone per cubic yard $3.05; aggregate $48,000.00. Remarks: Amount available, $44,000.00. There is an asterisk opposite the name of Wm. T. Gaynor and an asterisk below by "Bid recommended for acceptance, he being the lowest responsible bidder for the best and most suitable materials and

service." Below that is, "I hereby certify that the above abstract of proposals is correct. O. M. Carter, Capt. Corps of Engineers, U. S. A., Savannah, Ga., April 6th, 1895."

638 A copy of this Abstract will be attached to the record marked Exhibit No. 44.

I offer in evidence the proposals referred to in the Abstract just read, from Cordes & Bochman, Chas. C. Ely and Wm. T. Gaynor, copies of which will be attached to the record marked Exhibit No. 45, Exhibit No. 46 and Exhibit No. 47.

I offer in evidence the contract based upon the bid of Wm. T. Gaynor, referred to in that Abstract. It appears to have been entered into on April 20, 1895, between O. M. Carter, Capt., Corps of Engineers, U. S. A., of the one part, and Wm. T. Gaynor of Fayetteville, N. Y., of the other part, for constructing and repairing training walls and spur dams in Altamaha River, Darien Harbor and Jekyl Creek, Ga., and was approved April 30, 1895, by Brig. Gen. Casey, Chief of Engineers. Copy of this will be attached to the record and marked Exhibit No. 48.

Q. Who had the contracts for the improvements in Savannah Harbor and in Cumberland Sound at the time this contract was let?

A. Cumberland Sound, Anson M. Bangs; in Savannah, the Atlantic Contracting Co.

Judge-Advocate: That is all I have to ask this witness upon this branch of the case. He will be recalled at a subsequent period on other matters.

Cross-Examination by Mr. Rose.

Q. When did you first come to Savannah?

A. 1885.

Q. When were you first employed in the Engineer's office of the United States?

A. You mean in Savannah?

Q. Yes?

A. I think it was on the 22nd of November, 1885.

Q. Capt. Carter was then the officer in charge?

A. Yes, sir.

639 Q. In what capacity were you first employed?

A. I was employed as a rodman.

Q. For how long?

A. I did duty as rodman for a few months.

Q. And your next employment?
A. I did clerical work in addition to that; was out in the field and did office work at the same time.
Q. And you say that continued down until what time in 1885?
A. Until about May, 1885.
Q. Then what was your next work after that of rodman, and the work you just said you did in the field?
A. Off and on I had different duties. I did work as surveyor and as rodman, and I was carried on the pay-roll as Fort Keeper, Inspector and Clerk.
Q. When did you go in the office?
A. I don't remember the exact date, but I think the 22nd of November, 1885.
Q. In what capacity?
A. You mean what I was carried on the roll as?
Q. No, what you did?
A. Did office work.
Q. What do you mean by office work?
A. General office work.
Q. What were your duties in the office? What did you do?
A. I did my duty.
Q. What was that?
A. Different things.
Q. Tell us some of the things?
A. Clerical duty and drawing.
Q. Draughtsman, were you?
A. Yes.
Q. Were you at any time put in charge of the accounts?
A. Later on, yes, sir.
640 Q. When was that?
A. When Capt. Carter became disbursing officer.
Q. Fix about the time, I don't care about it exactly?
A. On the 24th of August, 1888.
Q. And you had charge of the bills, vouchers and accounts?
A. Yes, sir; under Capt. Carter.
Q. And continued in that capacity down until the time he left?
A. Yes, sir.
Q. Now, during the last years, say from 1890 to 1896, who was the correspondence clerk?
A. Mr. Connolly.
Q. And you had nothing to do with the correspondence, did you?

A. I had to supervise it.
Q. Except so far as the bills went?
A. No, sir.
Q. Now, Connolly, when did he leave?
A. On the 3rd of August, 1897.
Q. And after Capt. Carter left, were you put in charge of the correspondence?
A. I have been always in charge of the correspondence, too.
Q. You have always been in charge of the correspondence.
A. Yes, sir; that is, nominally in charge. I was put in charge, but I wasn't allowed to have much to say.
Q. You were in charge, but didn't have much to say about it?
A. No, sir.
Q. Did your other duties take all of your time?
A. Yes, sir.
Q. Is that the reason you didn't have much to say?
A. There maybe other reasons.
Q. Did you see the correspondence as it came in and went out?
A. Yes, sir.
Q. All of it?
A. No, sir; not all of it.
Q. The official correspondence I am talking about; did 641 you dictate any of the letters you read here?
A. No, sir.
Q. Did you assist in copying them, or copy them yourself?
A. At odd times I have copied letters.
Q. Did you copy any of these you have just read?
A. Yes, sir; I have copied some, but could not point out which.
Q. You wrote some of the letters yourself?
A. Yes, sir.
Q. Look at S. H. 1, page 430?
A. I have got it.
Q. That is a letter that is dated August 15th, isn't it?
A. No, sir.
Q. What is the date of that letter?
A. 17th.
Q. In whose hand-writing is that?
A. My own hand-writing.

Q. The whole letter?
A. Yes, sir; not the signature.
Q. I asked you about the letter, not about the signature That is the one that was copied after the one on the 18th?
A. Yes, sir.
Q. Give me the Jekyl Creek papers,—J. C. 1, 1893, and the enclosure.
A. (Witness handed Counsel the papers)
Q. This, I think you testified, was a letter of January 9th from Capt. Carter to the Chief Clerk of the War Department, asking for authority to print advertisement and approved specifications in relation to the improvements at Jekyl Creek, is that right?
A. This is the letter of January 9th, 1893. Will you please repeat your question?
Q. Tell me what it is?
A. Letter from Capt. Carter to the Chief Clerk of the War department, enclosing copy of advertisement for bids
642 for improving Jekyl Creek and Inside Water Route between Savannah, Ga.. and Fernandina, Fla., and requesting authority to publish same in certain newspapers.
Q. What newspapers?
A. Morning News, Savannah, Ga.; Engineering and Building Record, New York, and the Seaboard, New York.
Q. (Handing witness paper) Is that the specification that was sent with that paper? You just handed it to me as part of those papers,—is there any doubt about it?
A. I am just comparing it. That is the paper.
Q. That was one of the papers that was sent to Washington with that letter?
A. Yes, sir.
Q. Under the head of "Advertisement," in this paper, appears the following—Will you read what appears under the head of "Advertisement?"
A. (Reading) "United States Engineer Office, Savannah, Ga., January 7, 1893.—Sealed proposals for improving Jekyl Creek, Georgia, and the inside water route between Savannah, Georgia, and Fernandina, Florida, will be received at this office until 12 M., city time, on the 7th day of November, 1893, and then publicly opened. Specifications, blank forms, and all available information will be furnished on application to this office. O. M. Carter, Capt., Corps. of Engineers, U. S. A."

Q. On the 7th day of November?
A. 7th day of February; I made a mistake.
Q. Now, this is the advertisement that appears here under date of January 7th, 1893, which states that sealed proposals for improving Jekyl Creek and the inside water route between Savannah and Fernandina, etc., will be received at the office of the United States Engineer, and opened on the 7th day of February,—is that right?
A. Will be opened on the 7th day of February; yes, sir.
Q. And the date of that is the 7th of January?
643 A. Yes, sir.
Q. Was that paper sent back with J. C. 1, 1893, approved?
A. Yes, sir.
Q. I show you another paper endorsed, "Advertisement," and ask you if that was an enclosure with J. C. 1, 1893, when it left Savannah for Washington?
A. Yes, sir.
Q. Did that ever come back to Savannah from Washington?
A. Yes, sir.
Q. Does it bear the approval of the War Department?
A. No, sir.
Q. Isn't there stamped on the J. C. 1, the approval of the War Department?
A. Yes, sir; the approval in on this paper.
Q. But not on the other?
A. Yes, sir; it is stamped on there.
Q. That appears to have been done in the War Department?
A. Yes, sir.
Q. That advertisement is dated January 7th, 1893, for sealed proposals, to be opened on the 7th day of February, 1893, for Jekyl Creek, is it not?
A. Yes, sir.
Q. That is the advertisement referred to in this letter J. C. 1, 1893,—is a copy of the advertisement inviting proposals?
A. Yes, sir.
Q. And is the advertisement approved by the War Department by the approval on J. C. 1?
A. Yes, sir.
Q. I show you the Abstract of the bids or proposals for improving Jekyl Creek, Ga., and the Inside Water Route between Savannah, Ga., and Fernandina, Fla., opened Febru-

ry 7th, 1893, to which is attached a copy of the advertisement, and ask you to look at the advertisement approved 44 by the War Department, and tell me whether one is not an exact copy of the other? Don't compare it with the ook, but compare it with the original, please?

A. Yes, sir; that is an exact copy.

Q. So that the advertisement as printed and published is n exact copy of the one received from the War Department y Capt. Carter, and which he was directed to publish?

A. Yes, sir.

Q. The dates and all?

A. The dates and all.

Q. Now, will you tell me, if you can, from that paper, or anything else, when that advertisement was received in Savannah back from Washington,—the date?

A. January 16th, 1893.

Q. When was the first publication made? Here is some pencil memorandum of it in your own hand-writing; I think you can tell me from this?

A. That might be altered; I didn't read it from that.

Q. I didn't change it.

A. I didn't say that. The first publication was January 18th.

Q. In what paper?

A. Morning News.

Q. When was it published next in that same paper?

A. Jan'y 19th, 20th and 21st and February 5th and 6th, 1893.

Q. How many insertions of that?

A. Six.

Q. How many insertions did he ask for in that letter, to be put in the Morning News?

A. Six.

Q. That was approved by the War Department?

A. Yes, sir.

Q. When was the first insertion in the Engineering & Building Record?

A. Two; January 21st was the first one.

645 And when next?

A. January 28, 1893.

Q. That is a weekly paper?

A. A weekly.

Q. The Morning News is a daily?

A. Yes, sir.

Q. How many insertions in the Engineering & Building Record, New York, are asked for, and approved by the War Department, in that letter?

A. Two.

Q. When was the first insertion in the Seaboard of New York?

A. January 19th, 1893.

Q. When was the next?

A. January 26th, 1893.

Q. Is that a weekly or daily?

A. I think it is a weekly paper.

Q. That is all the number of times that it was printed in the Seaboard?

A. Yes, sir.

Q. How many times were asked for printing it in the Seaboard, and approved by the War Department?

A. Two insertions.

Q. Are there any papers asked for and approved by the War Department in which this advertisement did not go?

A. Yes, sir.

Q. What one is that?

A. The Brunswick times.

Q. You didn't understand my question: Are there any papers which Capt. Carter asked authority to print this in, and which the War Department approved, in which it was not printed?

A. It was printed—

Q. In all the papers in which Capt. Carter asked authority for?

A. Yes, sir.

646 Q. Now, authority is requested to publish also six times in the Brunswick Daily Times, this paper not being on the official list, but is published nearer the scene of the work than any other paper?

A. Yes, sir.

Q. Was it published in the Brunswick Daily Times?

A. Yes, sir.

Q. When?

A. January 18th, 19th, 20th, 21st, February 5th and 6th, 1893.

Q. That is a daily paper?

A. Yes, sir.

Q. So that in the two daily papers, the first issue was on the 18th of January?

A. Yes, sir.
Q. And that authority to publish was received in Savannah on the 16th; that is right?
A. Yes, sir; that is right.
Q. And the advertisement published was an exact copy of the advertisement approved by the War Department?
A. Yes, sir.
Q. Dates and all?
A. Yes, sir.
Q. In each one of these papers?
A. Yes, sir.
Q. And this is true in all these cases?
A. Yes, sir.
Q. In short, the advertisement was published in the papers for which authority was requested, which was approved by the War Department?
A. Provided there was no change; sometimes the advertisements were changed in Washington.
Q. If there was a change, the changed advertisement was then published,—the changed paper?
647 A. Will you please repeat that question to me?
Q. You said that sometimes there were changes in the advertisement in Washington?
A. Yes, sir.
Q. And when they came back here with their approval, that change was in?
A. The change was not.
Q. But that changed newspaper was the one it was published in?
A. Yes, sir.
Judge-Advocate: Sometimes a change of papers published in, and not the form of the advertisement.
Q. (Mr. Rose continuing) Yes,—a change in the papers?
A. I thought you meant the form of the advertisement.
Q. In other words, the directions from Washington, or from the War Department, were followed by Capt. Carter with regard to the advertisement, the papers and the substance sent to him?
A. Not in all cases.
Q. Tell me one that was not?
A. That was in 1896.
Q. What was that?
A. There was a change in some of the papers that came

approved; the date was no: changed; it remained to be opened on July,—I forget the date,—June 6th, and it came back from Washington to be opened the 6th,—on July 8th.

Q. And when did it come back from Washington?

A. It was approved August 15th.

Q. And got back here August 18th?

A. No; came back later.

Q. But it came back after the date had expired in the original advertisement?

A. Yes, sir.

Q. Give me S. H. 29 and C. S. 5, 1896.

A. Witness handed the Counsel the papers)

648 Q. These papers were handed by you to the Judge-Advocate on Tuesday, I think, day before yesterday,—the letter requesting authority to print the advertisement inviting proposals for improving the Harbor at Savannah, Ga.,—letter of June 4th, 1896,—was that printed slip on the papers when you gave them to the Judge-Advocate the other day?

A. Yes, sir.

Mr. Rose: With permission of the Court, I would like to read a paper which appears pasted on this paper, that has already been read, which was not read by the Judge-Advocate. (Reading)

"Advertisements to be inserted strictly in accordance with the following paragraph of the Army Regulations of 1895: 506. Ordinarily advertisements will be given six insertions in daily, or four in weekly, papers. When more than ten days are to interveen between the date of the first publication and the date of opening, those in daily newspapers inviting proposals will at once be given four consecutive insertions, and immediately before the date of opening, two consecutive insertions. In case of emergency, advertisements may be given one or more insertions, as time and circumstances permit.

Q. (Mr. Rose continuing examination) The advertisement authorized by the approval of this letter was inserted six times in the Morning News, a daily newspaper, wasn't it? How many times was it inserted in the Morning News?

A. Six times.

Q. And two consecutive days before the opening of the bids?

A. No, sir; 5th and 7th.

Q. Do you know what the 6th was?

A. It wasn't here at that time; I didn't order this printed; it is probable that the 6th was on a Sunday.

Q. So that it was two consecutive days of publication?

A. It is not published on a Sunday.

Q. Isn't it true that where there were daily news-
649 papers, they were inserted six times, in accordance with the authority, and, in weekly newspapers, inserted the number of times approved by the Department?

A. Sometimes not.

Q. Why?

A. For the reason that the advertisement was sent for approval to Washington, and it came back, and there would not be time enough for three publications.

Q. It was so delayed in Washington?

A. Yes, sir; so delayed in Washington.

Q. That is S. H. 29, 1896?

A. S. H. 29, 1896.

Q. Give me C. S. 5, 1896?

A. I haven't got that paper here.

Q. Do you remember that that contains, or has pasted to it, a printed slip exactly like the one I have just read to the Court?

A. Yes, sir.

Q. That is on the Cumberland Sound, 1896, letter?

A. Yes, sir; as far as I remember.

Member of the Court: Mr. President, I move that we take a recess of ten minutes.

Mr. Rose: May it please the Court, I think that is all the questions I desire to ask this witness at present, reserving the right to further cross-examine him, as the Judge-Advocate says he will come back on the stand, at that time.

The President: The Court will take a recess of ten minutes.

(Court took a recess at 1.28 p. m., and was called to order again at 1.45 p. m., all the members present.)

J. W. O. STERLY, a witness for the prosecution, resumed the stand.

Re-direct Examination by the Judge-Advocate.

Q. Here are the advertisement, specifications, and proposals in relation to the improvement of the Harbor at Savannah; it was handed to you by the Counsel; what date was put for the advertisement?

650 A. June 6th, 1896.

Q. What date appears as the date for the opening of the bids?

A. September 8th, 1896.

Q. Does there appear to have been any change of that date?

A. Yes, sir; there has been an erasure.

Q. That was the enclosure with request for authority to advertise, was it not?

A. Yes, sir.

Q. Do you know in what form that went forward with the request for authority?

A. To be opened July 6th or 8th,—July 6th,—it was in July.

Q. And with the authority to advertise, that (handing witness paper) came back as the form of advertisement to be published?

A. Yes, sir.

Q. Returned back I think in August?

A. Yes, sir.

Q. What date in August was this advertisement received back to be inserted?

A. August 15th.

Q. Received back approved, giving authority to publish?

A. August 15th.

The Court: That is the Cumberland Sound contract for 1896, is it?

Judge-Advocate: This is the harbor of Savananh paper.

Q. Read that advertisement which was returned with authority to publish?

A. (Reading) "United States Engineer Office, Savannah, Ga., June 6th, 1896.—Sealed proposals for improving Harbor of Savannah, Georgia, will be received at this office until 12 M., city time, July 6, 1896, and then publicly opened.

Information furnished on application. O. M. Carter, Capt., Corps of Engineers, U. S. A."

Q. Then no change was made in the War Department in the dates of the advertisement submitted for approval?

651 A. No, sir.

Q. It was approved and forwarded after the date specified in the advertisement for opening bids was given?

A. Yes, sir.

Q. (Showing witness paper) Are you famiilar with that writing there in red ink; that "September 8th"?

A. It is in two hand-writings; "September 8th" is in one hand-writing, and "1896" was written by Mr. Connolly. 'That is the same as this (indicating).

Q. Then you have no knowledge or judgment in regard to that?

A. No, sir.

Mr. Rose: 1896 was the original?

Judge-Advocate: Yes, sir.

Mr. Rose: No erasure at all?

Witness: No.

Q. (Judge-Advocate continuing) I hand you now the advertisement, specifications and proposals for improving Cumberland Sound,—the copy enclosed with the letter to which you have advertised,—this letter,—(handing witness paper) do any changes appear to have been made there?

A. Yes, sir.

Q. What changes?

A. The date "June 6th"; the "6th" has been changed and rechanged, and "September 8th" has been changed. There has been two changes and that is the second change," "September 8th".

Q. How was it left as the date for the advertisement?

June 6th.

Q. (Handing witness paper) Was that paper also an enclosure?

A. Yes, sir.

Q. Read that?

A. (Reading) "United States Engineer Office, Savannah, Ga., June 6, 1896.—Sealed proposals for constructing jetties at Cumberland Sound, Georgia, will be received
652 here until 12 M., city time, July 6, 1896, and then publicly opened. Information furnished on application. O. M. Carter, Capt., Corps of Engrs., U. S. A.

Q. That was the advertisement Capt. Carter was authorized to have published?

A. Yes, sir.

Q. Upon what date was he so authorized?

A. He was authorized to do so on August 15th, 1896.

Q. I see that this has been edited for publication. Please state what changes were made from the advertisement as submitted?

A. "United States" is abbreviated to "U. S", and "Georgia" to "Ga." "All" is stricken out and "Corps" is stricken out, and "U. S. A" is stricken out.

Q. In your cross-examination by Mr. Rose, you testified that the War Department has approved these dates of the advertisement,—the dates referred to in the advertisement. Do you know whether that was so as to the dates, or whether there was more than the authority to advertise by the department?

A. This is the authorized (indicating paper) advertisement.

Q. You do not know, as a matter of fact, anything about whether it was the approval of the form of the advertisement, or simpy authority to advertise, as requested?

A. That is the authority,—if there is authority to advertise,—as it stands there.

Q. Then it was authorized on August,—what date?

A. Authorized on August 15th.

Q. Then on August 15th, the office was authorized to advertise for proposals and bids to be opened July 6th. Do you know who authorized that change from July 6th to September 8th,—of your own knowledge?

A. Of my ovn knowledge, I know that this was authorized in the specifications by the Chief of Engineers (indicating paper).

Q. Where did you find that?

A. The specifications has been approved on that letter for the 6th.

653 Q. After September 8th appeared there?

A. Yes, sir.

Q. You have said you didn't know who put that "September 8th" there I think. You testified that you didn't know who put "September 8th" there?

A. I should have said after I received these papers back,—I received the papers in this way.

Q. Received back,—who from?

A. From Washington.
Q. Who sent it to you?
A. Capt. Goethals.
Q. You have said you didn't know who wrote that, did you not?
A. I don't know who wrote this.
Q. That "September 8th"?
A. Yes, sir; I don't know who wrote that.
Q. And you don't know who made that figure in black ink between "June" and "1896" in red ink?
A. No, sir; I do not.

Judge-Advocate: For the information of the Court, I will submit these two papers in relation to each case, which have been referred to, with the changes made in the red ink as they appear. These specifications,—the copy of the advertisement and the specifications in relation to the improvement of the Harbor of Savannah, a copy of which will be attached to the record marked Exhibit No. 49 and the enclosure marked Exhibit No. 49A. Also the advertisement and specifications in relation to the improvement of Cumberland Sound, copies of which will be attached to the record marked Exhibit No. 50; enclosure marked Exhibit No. 50B.

Re-cross Examination by Mr. Rose.

Q. I understood you to say the other day that you received these two papers, Exhibits 49 and 50, at Patchogue, Long Island?
A. Yes, sir.
654 Q. Received them direct from Washington?
A. Yes, sir.
Q. In the shape they now are?
A. Excuse me; I don't know which file number.
Q. That is Exhibit 49, and that is the specification, and that is Exhibit 50 (showing witness papers)?
A. Yes, sir.
Q. And when they came to you, the advertisements in here were in the shape they now are?
A. Yes, sir.
Q. The original request for authority was to have the bids opened July 6, 1896, and that was not approved until August 15th?
A. Yes, sir.
Q. And therefore the advertisement if it appeared after

the 15th of August could not be for bids to be opened on the 6th of July previous?

A. No, sir.

Q. The change, therefore, of the date for opening the bids was necessary under the authority?

A. Yes, sir.

Q. Do you know whether Capt. Carter was in Washington on the 15th of August?

A. Yes, sir; he was in Washington personally.

Q. What date did you get this back from Washington with the changes?

A. August 17th.

Q. Who made those changes, or by what authority they were made, you don't know?

A. Not on that paper.

Q. No; not on these papers?

A. No.

Mr. Rose: I have nothing further.

Q. (By the Court) In the Engineer's office, while it was in charge of Capt. Carter, were memoranda sometimes
655 kept, or ever kept, of men believed to be responsible and believed, or supposed, to have facilities for doing the work at advantageous rates; that is, the work called for under the different contracts and specifications, so far as you know?

A. No, sir; as far as I know, not.

Q. (By the Court) After the specifications were received, so far as you know, were they ever sent promptly to any such men without waiting for a request for them in response to the advertisement?

A. They were always, of late years,—since 1892, they were always accompanied by a letter of transmittal.

Q. (By the Court) Yes, but were they sent out without waiting for a request from these men? Were they sent to these men supposed to have special advantages or facilities for doing the work?

A. In some instances I cannot find any record of requests,—there was no written request.

Judge-Advocate: (Addressing witness) You do not understand; he wants to know whether specifications were sent to those who might be bidders,—prospective bidders?

Q. (By the Court) Without waiting for any request for them; for instance, some men might have been known to Capt. Carter, or to the office, to have special facilities or

advantages to do this work, good men to do the work; now, were the specifications sent to those men without waiting for those men to ask for the specifications?

A. I don't know; they have never been sent out that way,—not to my knowledge.

Q. (By the Court suggested by Mr. Rose) Would you have known it if the specifications had been sent out? Did you have direct charge of sending out the specifications?

A. No, sir; Captain Carter would tell whoever was there to send them out.

Q. (By the Court) If they had been sent out without waiting for a request, would you have known it?

A. No, sir.

656 The following questions propounded by the Judge-Advocate were adopted by the Court:

Q. I will ask you if, since 1892, as you testified, whether specifications known to you to have been sent out were accompanied by a written communication?

A. Previous to that time—

Q. No; whether all since 1892, which have been sent out to your knowledge, have been accompanied by letters of transmittal, and made a matter of record in the office?

A. Yes, sir; since 1892, it was a matter of record in the office.

Q. Who had custody of these specifications?

A. In most cases, Capt. Carter.

Q. Do you know if any account was kept of the number of specifications received, and what disposition was made of them?

A. Yes, sir; nothing but the records in the office so far as I know, the letter of transmittal.

Q. Do the records of the office show how many copies were received from the printer?

A. The bill shows.

Q. And how many were sent to the Chief of Engineers?

A. Yes, sir.

Q. And there was no account of stock ever taken,—of how many were left on hand?

A. No, sir.

Q. What is done with those left on hand after the bids have been opened,—those unused?

A. Those which have been unused are put away,—put aside; some are used for the use of inspectors, and some

are used in making out new specifications,—use part of the specifications.

Q. Where are they stored?

A. They are stored in the Engineer's office.

Q. In whose charge? Who would have control of them?

A. Nobody has direct control over them.

657 Q. Who could get out one? Who could give one out?

A. Everybody could give one out; you could tell the messenger to give me a specification; I mean the specifications after the bids are opened.

Q. They are so plentifully left on hand that anybody could get one?

A. Yes, sir; in some cases. In some, a very few are left.

Q. How about the contract of 1896,—were there many of them left?

A. The contract of 1896, there were quite a number left.

The following questions propounded by Mr. Rose were adopted by the Court.

Q. There were more printed under the contract of 1896 than before?

A. Fifty more.

Q. In the Jekyl Creek contract, and the Altamaha River, a bidder by the name of Chas. C. Ely appears to have put in a bid; that must have been done by three copies?

A. Must have been done by three copies.

Q. Will you please find in the record, a record of sending to him three copies?

A. Three copies; P. Sanford Ross, Savannah.

Q. That was sent to P. Sanford Ross?

A. Yes, sir.

Q. The bid was put in by Chas. C. Ely?

A. Yes, sir; 1895.

Q. It is in the name of Chas. C. Ely, the bid was?

A. Yes.

Q. And there is a long letter transmitting him a copy of these specifications?

A. No; P. Sanford Ross; sent it to P. Sanford Ross.

Q. Find in that book the letter sending a copy to Elton A. Smith?

A. There is no such letter in this book.

Q. Will you be kind enough to read the letter that appears on page 203? (Letter Book A. R. page 203).

658 A. (Reading) "Mr. Alton A. Smith, Savannah, Ga.| Dear Sir: My supply of specifications for improving

Altomaha Aiver, Darien Harbor, etc., being almost exhausted, on account of the great demand for the same, I have to request that if they are of no value to you, you will have the kindness to return to me in the enclosed envelope at least two of the three copies sent you on the 5th instant. Very respectfully yours, Capt., Corps of Engrs., U. S. A., One enclosure"

Q. That was after the bids had been opened?

A. That letter does not bear the signature of Capt. Carter.

The Court: What contract does that refer to?

Mr. Rose: Jekyl Creek, 1895.

The following questions were propounded by the Court:

Q. Did your office ever receive general authority to advertise in the newspapers?

A. No, sir.

Q. You never advertised except under special authority received in each case?

A. Yes, sir.

Q. Did the application for authority to advertise always contain the dates,—the date of advertisement and the date when the bids were to be opened?

A. Yes, sir.

Q. Were those dates in all instances adhered to, except in the one case which you have spoken of here?

A. To my best knowledge, they have always been adhered to.

Q. Does not the law require advertisements for thirty days for supplies and services, except in cases of emergency?

A. The law requires it.

Q. Or more?

A. Or more if practicable, except in case of emergency.

Q. Were thirty days ever given?

659 A. Thirty days were given between the date of the advertisement and the date of opening.

Q. The date of the first publication of the advertisement in the newspapers and the date of the opening?

A. No; never.

Q. Generally, what period of time was given,—in your opinion?

A. In my opinion, it takes between the date of the receipt of the approval to advertise and the date of the opening of the bids,—that varied from 18 to 24 days.

Q. That is, from the date of the approval by the Secretary of War?

A. Yes, sir.

Q. And the date of the opening of the bids?

A. Yes, sir.

Q. From twenty to twenty four days?

A. Yes, sir: from twenty to twenty-four days; I said before 18 days, I think.

Q. Did you ever have any conversation with Capt. Carter upon this subject,—upon this matter of time?

A. No, sir; I did not, except that I asked Capt. Carter in the beginning, "On what dates do you want to have it advertised in the papers"? after the paper came back approved.

Q. Did you ever have any conversation about the time of opening the bids?

A. Yes, sir; in 1896 I had a conversation about it.

Q. Repeat that conversation, if you can?

A. Capt. Carter says, "I let it stand". I asked Capt. Carter whether he would change the date, whether it should be changed to September 15th—

Q. Why September 15th?

A. Being one month after the date of the approval, and Capt. Carter told me, "No; I let it stand the way it is; that gives ample time enough". The specifications were printed from the printer's copy, and were almost always ready
660 within a week after the approval came back.

Q. Did he tell you there was no emergency in the case?

A. No, sir.

Q. Any further conversation that you recollect on that subject?

A. I did not have any other conversation on that subject.

Judge-Advocate: That is all, Mr. Sterly; you can go. I could put on another witness, but I would like the reporters given a little time to catch up, they are so very much behind, and I move that the Court adjourn until 11.00 o'clock tomorrow morning.

The Court: If there are no objections, the Court stands adjourned until tomorrow morning at 11.00 o'clock a. m.

(Here, the Court, at 2.15 p. m., adjourned, to meet Friday, January 28th, 1898, at 11.00 o'clock a. m.)

THOMAS F. BARR,
Col. & Asst. Judge Adv. Genl
Judge Advocate.

661 United States Court Room,
Savannah, Georgia, January 28, 1898.

The court met pursuant to adjournment, at eleven o'clock this morning.

Present:

All the members of the Court, and the Judge-Advocate:

The accused, his counsel, and the reporter, G. T. Cann, were also present.

The President: The Court will come to order; the members of the Court are all present.

FRANK A. D. HANCOCK, a witness for the prosecution, having been duly sworn, testified as follows:

Direct Examination.

Questions by the Judge-Advocate:

Q. Mr. Hancock, please give your full name.

A. Frank A. D. Hancock.

Q. And place of residence?

A. Savannah, Georgia.

Q. What is your occupation?

A. At the present time in the employ of the Venable Construction Co.

Q. Where are the headquarters of that Company?

A. Atlanta, Georgia.

(The President): What construction company was that?

Q. The Venable Construction Company, I understood you to say?

A. The Venable Construction Company, Atlanta, Georgia.

By a Member: Savannah?

A. Atlanta, sir.

Q. Did you see an advertisement, published in 1896, calling for proposals for the improvement of Savannah Harbor and Cumberland Sound?

A. I must have seen it; I became aware that those improvements were to be made.

Q. Did you become interested in the improvements?

662 A. Yes, sir.

Q. In what way?

A. I was a member of the concern of McAlpin & Schley, and Mr. Venable, of the Venable Construction Co., or Venable Bros., came to Savannah, and I was introduced to him

as being familiar with local conditions. There was no definite plan made. The general plan was we were to join for the purpose of trying to obtain the work and do it.

Q. Join with Mr. Venable?

A. Yes, sir, that was the general plan at the time.

Q. Who is Mr. Venable?

A. Mr. Venable is a member of the firm of Venable Bros. of Atlanta.

Q. At that time?

A. At that time. The Venable Construction Co. has since been organized.

Q. Did you procure the specifications?

A. Yes, sir.

Q. In relation to those two contracts for the improvement of Savannah Harbor and Cumberland Sound?

A. Yes, sir.

Q. Please state to the Court how you want to work and with what success in procuring the specifications.

A. I called at Capt. Carter's office, and I was admitted to his private office and told him that I wanted copies of the specifications. He then asked me if I applied as an agent; I said that I was a principal; he said, "That is all right, because we are not issuing them to agents." I will try to remember the sequence, of course, there may be some change.

Q. I wish you would without my questioning you upon the points; state to the Court everything that occurred.

A. After that I think his first reference was to the Cumberland Sound work. He first asked me if I was familiar at all with the work, if I had been over it; I said I was not; 663 he said "it is my duty to warn all prospective budders that the work is of a difficult character." Then he referred particularly to the Cumberland Sound work, and said it would not be safe for any bidder to bid on it without first seeing the work and familiarizing himself wth its character. He went on to say that it would be necessary to construct a trestle over the breakers, and that the character of the work was such that he estimated a $400,000 plant would be necessary to effect it, and he referred to the fact that no money would be available for a year, and a lot of the work would have to be done on the capital of the contractors, which would make large capital necessary. Then he said for the purpose of maintaining his records in the office he would not give me the specifications, but he would have the proper letters sent to my office, which he did promptly.

Q. He sent you letters containing the specifications?
A. Yes, sir.
Mr. Rose: He said 'promptly' Col.
Q. He sent you a letter then promptly, containing the specifications?
A. Yes, sir.
Q. How many?
A. One for each work.
Q. One for each work?
A. One for each work, yes sir; there was a separate letter for each specification.
Q. How long before the opening of the bids was it that you had this conversation with him?
A. It was on the 4th, of September, that is four days,—the bids were opened on the 8th.
Q. That was four days before?
A. Yes, sir.
664 Q. Did you make application for a sufficient number of applications to enable you to put in your bid?
A. No, sir.
Q. Did he give you any information in regard to any special point as to the requirements of the specifications, about the material to be used?
A. Nothing as to material.
Q. Did he say nothing about the stone to be used?
A. No, sir.
Q. Did he say anything about the type of mattresses which should be used?
A. No, sir.
By a member of the Court: Was this in 1896?
Judge-Advocate: Yes, I asked that question first. I think that was my inquiry?
Mr. Charlton: Yes; the contract of '96.
Q. When you originally applied for specifications, did you ask for a copy of the specifications or for specifications to enable you to make a bid?
A. A copy.
Q. A copy; you only wanted a copy?
A. I didn't specify anything particularly; I did not ask for a full set.
Q. Then you got what you asked for in that instance?
A. Yes, sir.

WILLIAM W. OSBORNE, a witness for the prosecution, having been duly sworn, testified as follows:

Direct Examination.

Questions by the Judge-Advocate.

Q. Mr. Osborne, will you please give your name and profession?

A. William W. Osborne, attorney at law.

665 Q. You occupy an official position in the state, do you not?

A. I am prosecuting officer for this circuit, Solicitor General is the title.

Q. You have been a member of the State Senate, I think?

A. Yes, sir.

Q. Do you remember in Sept. 1896 if you had occasion to request from Capt. Carter specifications in relation to the improvement of Cumberland Sound and Savannah Harbor?

A. I did so, yes sir.

Q. For whom were you acting?

A. W. H. Venable.

Judge-Advocate: Those letters are in evidence (handing the letters to counsel for the accused) and spread upon the record.

Q. Is that your letter, Mr. Osborne?

A. Yes, sir, dated Sept. 4, 1896.

Judge-Advocate: This is a letter, may it please the Court, which is already spread on the record as evidence, but as it is short, I will read it:

"Savannah, Ga., Sept. 4, 1896.

Capt. O. M. Carter,
Savannah, Ga.

Dear Sir:—

We have a client who asks us to get from you immediately copies of specifications for the jetty work for the Savannah Harbor, and Cumberland Harbor. We would like these specifications at once.

Very truly,
BARROW & OSBORNE."

Q. Did you receive those specifications for which you asked?

A. I did not, sir.

Q. What further action did you take?

666 A. I received a written communication from Capt. Carter, I cannot find it; at the request of Capt. Gillette I searched my office, but I have not it, asking the name of the party who desired the specifications.

Q. Did you reply to that letter?

A. I did, sir.

Q. Was that your reply? (showing witness a letter)

A. That's the reply, yes, sir.

Judge-Advocate: This reply is so short I will read it again.

United States Engineer Office,
Savannah, Ga., Sept. 4, 1896.

"Messrs Barrow & Osborne,
Savannah, Ga.

Dear Sirs:

Replying to your inquiry of the 4th, inst., please send to me the name and address of the party desiring specifications.

Very respectfully, yours,

O. M. CARTER.
Capt. Corps of Engrs., U. S. A."
Savannah, Ga., Sept. 4, 1896.

Dear Sir:—

The name of the party desiring the specifications for harbor work is R. A. Johnson, Augusta, Ga.

Respectfully,
BARROW & OSBORNE.

Capt. O. M. Carter,
Savannah, Ga."

Q. Did they send you those specifications?

A. They did not; the word come back they would be mailed to the party.

Q. Who is R. A. Johnson, of Augusta, Ga.?

A. I do not know. Mr. Venable was in my office. He
667 came there and said he desired the specifications some time in advance of any of the other contractors, knowing that he had them. For that reason I wrote the first letter. He was still in my office when the communication came back from Capt. Carter, and he said, "Give him the name of R. A. Johnson, of Augusta, Ga." I gave the name and the reply came back they would be mailed. Then I found we didn't get them, and Mr. Venable went over and got them himself.

Q. So far as you know?

A. Of course, I was not there; I saw them in his possession afterwards.

Q. Did you participate in the preparation of the bids, Mr. Osborne?

A. I cannot say that, sir; Mr. Venable desired to place himself in a position where he could bid, and I believed he and his brother, Sam, were going to sign the bond, making the bid through somebody else, and Sam, his brother, was not in Savannah and would not reach here until the Central train came in the afternoon before the bids were going to be opened. I think there were three copies, he was to qualify on and the brothers were to qualify as bondsmen; I had Mr. Carr, the clerk of the superior court of this county, come to his affice at 8 o'clock the evening before the bids were going to be made, and he qualified both the Messrs Venable. That is the only thing I had to do with it and that was to see that he was there at the time. I was present when they qualified the bond.

Q. Do you remember the amount of the bond?

A. No, sir, I do not remember, I could not tell you.

Cross-Examination. (*By M. Charlton.*)

Q. You do not know who R. A. Johnson is, do you?

A. No, sir, I have no idea.

Q. Don't you know he has no existence at all?

A. I did not at that time.

668 Q. You know it now, don't you?

A. I heard so.

Q. You heard that from Mr. Venable?

A. I have not; no, sir: I did not get it from him: I did not know at that time it was a fictitious address: I understood, or rather, the impression I had was he was some person working for Mr. Venable.

Q. You knew that Mr. Venable knew he was not in Augusta?

A. No, sir.

Q. You knew that he didn't want them?

A. No, sir.

Q. You knew that Mr. Venable did, and he was in your office at the time?

A. Yes, sir.

Q. Within a step or two of the engineer's office?

A. Yes, sir.

WILLIAM H. VENABLE, a witness for the prosecution, having been duly sworn, testified as follows:

Direct Examination.

Questions by the Judge-Advocate.

Q. Please state your name and residence, Mr. Venable.
A. William H. Venable, Atlanta, Georgia.
Q. What is your business?
A. I am in the granite business.
Q. What was your business in 1896?
A. I was in the tranite business—the stone business.
Q. The same business as at present?
A. Yes, sir.
Q. Where are your works?
A. At Stone Mountain and Lithonia, 16 and 25 miles below Atlanta, Georgia.

669 Q. How far from Savannah?
A. Approximately, 275 miles.
Q. How far from Brunswick?
A. About the same distance.
Q. And how far from Fernandina?
A. I suppose 400 miles; I really don't know the distance accurately.
Q. You were in Savannah in 1896, a short time prior to opening bids for the improvement of Cumberland Sound and Savannah Harbor, were you not?
A. I was, yes, sir.
O. And in Mr. Osborne's office here in Savannah?
A. Mr. Osborne and myself were together; we were in the state senate together; he was my friend and I came to him as my friend and attorney to investigate the matter of bidding.
Q. You were President of the senate?
A. I was President of the senate, yes, sir, of which he was a member.
Q. Did you make efforts to secure specifications to enable you to make a bid?
A. I did.
Q. How did you secure them?
A. I requested Capt. Carter to give them to me.
Q. That is when you did secure them?
A. Yes, sir.

Q. Did you make any preliminary effort to secure them before you made the request?

A. Yes, sir, I went to the office of Mr. Osborne and requested him to write a note to get me the specifications without going to the office myself.

Q. Why did you not want to to go the office yourself?

A. Well, I thought as a matter of prudence, it would be best for me not to go to the office and get the papers.

670 Q. Prudent in what way?

A. Well, I did not care particularly to be known in the transaction, until I had formally and absolutely made up my mind to bid.

Q. What took place in Mr. Osborne's office? Did you sesure the specifications, or a copy of the specifications there?

A. My recollection is sir, that a letter was addressed to Capt. Carter and a reply came back asking for whom we wanted the specifications for, and Mr. Osborne asked me who he should say, and I gave him the name of a party, a fictitious party, and I supposed he could get them for one party as good as another. I gave the name of some man, Johnson, who lived in Augusta.

Q. And there was no such person to your knowledge?

A. Not to my knowledge, no sir.

Q. It was not your desire that your attorney should have the specifications sent to you or to anybody, but to be sent there to him for you?

A. Sent to his office for me.

Q. The name was then used simply as a blind?

A. Yes, sir.

Q. When you saw Capt. Carter, Mr. Venable, what conversation did you have with him in relation to those proposals?

A. He invited me into his private office where he had the prints and charts and everything, and began to show me the work in detail as appeared on those records.

Q. He pointed out the different localities where the improvements where to be made?

A. Yes, sir, and asked me if I had inspected the work. I told him I had not.

Q. Did he explain to you the specifications in detail?

A. In a limited measure he did, not through the whole

671 of them in detail?

Q. Did he give you the details of the types of mattresses to be used?

A. He discussed them with me, yes, sir.

Q. Did he discuss the use of any different mattresses from any of those described in the designs?

Mr. Blair: Let him tell what he says, don't lead the witness.

Judge-Advocate: I don't propose to lead the witness, I only propose to expedite the examination.

Q. State fully if you can, in narrative form, Mr. Venable, each and every thing that was said at that interview between you and Capt. Carter.

A. He said to me in discussing the specifications, that there were three different designs and they were to be made acording to those designs. I knew absolutely nothing about the manufacture or the use of the mattresses, never having had any experience in that line of business. He explained to me the difficulties attending the work, in the construction of the work and the vast amount of money required to be used in the plant on the work, and the executing of the work speedily as the specifications required it should be done.

Q. The vast amount of money?

A. The large sum of money necessary to be used in it.

Q. Well, was that all that he stated about a large sum of money, Mr. Venable?

A. I am not sure that he stated to me in round sums the amount of money that would be necessary to equip the plant sufficient to do the work; I am not sure that he stated that, but my impression is, my best recollection is that he said it would require something in the neighborhood of $400,000; that was in reference to where in the specifications it was stated that so many boats and the equipment necessary

672 should be stated, you had to state the equipment, the barges, etc, in the specifications. That is my recollection and that we would have to build a wharf, we could not use the ordinary barges to deposit a great deal of the stone at Fernandina, but that we had to build a wharf out, a tram, out some considerable distance. It was merely in the way of showing to the interest of the contractors, giving the necessary information to predicate an intelligent bid upon it, all the difficulties surrounding the work. That is what I went there for; those things I discussed with him.

Q. Did he give you any information in regard to the designs of mattresses which would be mostly used?

A. No, sir.

Q. He didn't mention that subject?

A. Of the three kinds?

Q. Of the three types?

A. Of the three types, no sir, that is my recollection. Capt. Carter told me in reference to the stone to be used that No. 4, when I asked him the question, that No. 4 was intended to have Florida stone, the specifications covering No. 4, meant Florida stone.

Q. Do you know anything about Florida stone, Mr. Venable?

A. No, sir, I was in the granite business, and therefore, I didn't intend to bid on Florida stone, if I had put in the bid, but on my own stone, and afterwards to investigate the Florida stone.

Q. Did you prepare a bid or bids?

A. Yes, sir.

Q. Proposals for both improvements?

A. Yes, sir, or rather, I was preparing it and I intended to get McAlpin & Schley to put in the bid, they being local people here, my brother and I qualified on the bond for $500,000, the bond required being half a million.

Q. You being the interested party, if the bid was successful, and furnishing the necessary capital?

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A. Yes, sir.

Q. Did you submit those bids?

A. I did not.

Q. Why not?

A. I did not thoroughly understand the manner of the construction of the construction of the mats, and I could not get any information, not from him, I didn't ask him except in a general way, as I before stated, but I had had no experience, and I was afraid to undertake it, was one reason and the other reason was I came here primarily to sell my stone, being in the granite business and this requiring a large amount of stone.

Q. Did you gather any information in regard to the cost of construction of the different types of mattresses?

A. I could not get any information from any one here. Every one I went to gave me no information about it outside the office. The only information I got was as I told you, what Capt. Carter gave me.

Q. Was there anything in the requirements of the specifications in relation to those mattresses that had effect upon you?

A. Well, I knew from what little information I got, that one of the three classes or three designs, or two, that the

relative cost between the three was considerable difference; I did not know which of the three I would be required to put in, and on the question or score of prudence, I considered I would not bid, inasmuch as I had come for the purpose of selling stone, and I had made my contract, if the contract was awarded to The Atlantic Contracting Company, that they would take my stone at certain prices.

Q. That was before the bids were submitted?

A. Yes, sir, I think it was the day before.

Q. The day before the bids were to be submitted, you had a contract?

674 A. I made the contract or negotiated it with Capt. Green; I consummated it by having it signed by the President of the Company, John F. Gaynor.

Q. What Capt. Green is that? Do you know his initials?

A. D. B. Green of Stamford, Connecticut.

Q. How did you happen to enter into that contract, Mr. Venable?

A. Well, when I ascertained that clause one, two and three would cover my stone and I wanted to sell the stone I went to Green and Gaynor.

Q. Why?

A. Because my best judgment was that those gentlemen having had more experience than any one else and having had these contracts for a series of years knew best how to do the work and would be more liable to get it, and I wanted to sell the stone to them.

Q. You contracted with them then to furnish the stone for the first, second and third classes?

A. One hundred thousand tons to Savannah and one hundred and fifty thousand tons either to Fernandina or Brunswick at our option at a certain price agreed upon.

Q. The point of delivery to be agreed upon by you?

A. In the Fernandina work that is.

Q. Either to Fernandina or Brunswick?

A. The Cumberland Sound I should say? Yes sir.

Q. At what price?

A. For the Savannah work I was to receive one dollar and a half a ton of two thousand pounds on board the cars Savannah.

Q. The point of delivery?

A. On board the cars Savannah. I was to receive two dollars a ton on board the cars at Fernandina or one dollar

and seventy-five cents a ton aboard the cars at Brunswick, Ga., for classes one, two and three such as I should deliver there or here.

Q. Did you approach these parties upon this subject or did they approach you?

675 A. Well, I should say it was a mutual approach. I could not say they approached me or I them. I was just as anxious to sell as they were to buy.

Q. You casually met?

A. No, I think we met by design.

Q. By mutual design?

A. By mutual design.

Q. Do you know if they were aware you were a prospective bidder?

A. Yes, sir; when I received my specifications, after I had failed to get them by Mr. Osborne, when I received the specifications I got down to the bottom of the stair way or just to the corner, of the place over there where the office was, I met Ed. Gaynor whom I knew and had tried to sell stone on previous contracts and failed, and he said he would like to see me about the stone.

Q. He saw you had come from Captain Carter's office?

A. I cannot say that. I do not know where he saw me come from. I came down very fast.

Q. I thought you were coming down the stairs from the office when he met you?

A. I came out on the corner, I think I met him on the corner of the walk.

Q. A place contiguous to Captain Carter's office?

A. Close proximity. It was on the street very near where his office was situated.

Q. You were coming from the direction of Captain Carter's office?

A. I came down the stairway and out the door leading from his office.

Q. How far were you from Captain Carter's office when you met him?

A. I was just out on the street if I remember.

Q. A few steps or many?

A. A few steps.

Q. Well, that is near enough Mr. Venable?

A. I would like to be—that is my remembrance.

676 Q. Well, state what occurred, what conversation occurred between you?

A. I have stated that he said he wanted to see me about lling him the stone. I went to the hotel and met Captain reen and John Gaynor and several other gentlemen, who re here on the same mission.

Q. Well, we will confine the examination, Mr. Venable, your relations and intercourse with Captain Green and l. Gaynor.

A. Well, I had nothing to do with Ed. Gaynor in selling e stone, I had no communications with him at all.

Q. With whom did you negotiate?

A. With Captain Green. And after I had determined the uestion with Captain Green and we had agreed upon the rice, I wrote out the contract,—the contract is a written ntract.

Q. Have you a copy of the contract, Mr. Venable?

A. No, sir, it is at home. It is in Atlanta, in my office.

Q. And this was all before the bids were opened?

A. I think the contract was signed the morning the bids ere opened,—at twelve o'clock or one in the morning of ie day the bids were opened.

Q. Then you did not put in your papers?

A. No, sir.

Q. What did you do with them?

A. I kept them.

Q. For how long?

A. I may have them now, I do not remember.

Q. Was any effort made to obtain them from you by ny party?

A. Yes, sir.

Q. By whom?

A. By John F. Gaynor, the President of the Company.

Q. Before or after the opening of the bids?

A. Before.

Q. How long before?

577 A. In the morning before.

Q. After or before the execution of the contract?

A. I will not be certain whether it was in the morning efore or the night before the morning of the day. I believe hat it was in the morning before.

Q. Refresh your memory, if you can, Mr. Venable, and nform me if it was before or after you had entered into he contract to furnish the stone?

A. It was after, sir.

Q. After?

A. Oh, yes, sir, yes, sir.

Q. Then it must have been in the morning before?

A. I think this contract, my contract, I am sure it was signed in the morning of the bidding. After that Gaynor requested me to surrender to him my papers,—the three papers that I had made out. I declined to do it because I had made my contract in good faith for the stone, and I thought if I did, I would be in a conspiracy, and I declined to do that. I simply told him I didn't propose to vitiate my contract. I thought it would be a violation of the law. I would not surrender my papers.

Q. Your papers were in due form for presentation?

A. Yes, sir.

Q. All proper acknowledgments made and sureties furnished?

A. I had qualified and my brother had qualified. I do not know whether or not McAlpin & Schley had signed the papers, or whether they had kept them there to be signed; but they were ready to be signed and prepared for presentation, minus the signatures.

Q. Could you have justified as sureties without having something to justify to, Mr. Venable?

A. Yes, I could simply swear that I was worth, my brother and I, over and above the amount of money required in the affidavit which we had previously made before the Clerk of the Court. I do not remember whether these people were there or not; they may have been, though I don't remember; that is the whole of it—I don't remember.

678 Q. But you do know that the papers were in your possession that morning?

A. I do know they were in my possession, and in a pigeon hole or box that was in room, and I pointed out the package to Mr. Gaynor.

Q. In that instance you do not remember whether the names of the ostensible bidders were affixed to the proposals?

A. That I do not know, therefore, will not say. I do know that I had qualified and my brother had qualified for the amount stated on the bond, which was a half million on each contract, five hundred for one and five hundred for the other.

Q. $500,000.00 in each contract?

A. That I dont remember but the papers will show; but whatever it was we qualified for it.

Q. In view of your ability to become surety in so large an amount, Mr. Venable, why did you not make the bid in your name?

A. I thought putting it in the name of another, the two of us be— bondsmen, we could fix it then you see, afterwards, when it became known, if they wanted us to make another bond, if we were successful in the contract, then we could submit a different bond, you see. I did not want to be put to the expense and cost of hiring a bondsman to sign the bond when there was no certainty of our getting the contract. My brother and I could qualify for the amount put on the contract, and by putting the contract in the name of another and backing them, and on the other hand, by selling the stone and things of that sort, make a proper and straight contract.

Q. You preferred then to be a surety yourself rather than solicit others to become surety for you?

A. That's it, that is the motive that actuated us in the transaction.

Q. You were informed, Mr. Venable, by Capt. Carter 679 that Florida stone could be furnished under No. 4 of the specifications?

A. That is my remembrance.

Q. Did you make any statement as to your inability to furnish that stone?

A. No, sir.

Q. Did you discuss the subject of Florida stone with him at all?

A. I was not with him exceeding 20 minutes, I guess.

Q. That was not the question; did you discuss with him at all the question of Florida stone?

A. The only discussion I had with him was the conversation I have related about.

Q. Not as to the character of the stone?

A. No, sir; I am sure he told me that the fourth class stone was Florida rock, and that the specific gravity of the stone about that, I don't thing he said anything to me. I had made a calculation that it would be 155 pounds; I did not think that covered the Florida stone, and therefore, I made a contract with these gentlemen for one, two and three.

Q. You made an estimate for your own benefit of what fourth class stone should be under the specifications?

A. What the third class should be.

Q. Fourth class stone should be?

A. I didn't make any contract or any effort about the fourth class stone.

Q. I mean you made a calculation as to whether the Florida stone could fill it?

A. No, sir, I made the calculation for myself entirely because I was not in the Florida stone business, but in the granite business; I expected to sell whatever stone was required that filled the specifications of one, two and three from my own quarries, therefore, I did not pay any attention to the fourth class stone, which I knew from what he said, should come from Florida.

680 Q. What did you just mean by 155 pounds?

A. Well, I thought that the 2.4 set forth in the specifications, meant it should be 155 pounds to the cubic foot in reference to the specific gravity, 2.4, that is in there; I don't understand it either. You will understand in the specifications there, it says that fourth class stone should have a specific gravity of 2.4 and I thought that meant 149 to 155, something like that.

Q. Was Capt. Carter's statement in relation to Florida stone, confined to Florida stone of the character described in the specifications, or to Florida stone generally?

A. The Florida stone that the specifications covered, that the fourth class stone meant a Florida stone up to that standard.

Q. Now Mr. Venable, instead of getting your attorneys to procure specifications, why did you not go originally to Capt. Carter and get them as you did subsequently?

A. From what I learned when I arrived in Savannah, my judgment was that the best way for me to get the specifications,—I had endeavored to get them through Mr. Hancock, and then I went to Mr. Osborne as my friend, to get them in that way, but failing in that, I didn't want it to be known I came down here for the purpose of bidding at all.

Q. Why did you think it necessary to keep it secret, Mr. Venable?

A. Well, I thought that the Atlantic Contracting Co. knew everybody that came here and I wanted to avoid being with them or seeing them at all until I made up my mind whether

I should bid, or whether I should sell the stone, and after an effort I could not get information sufficient that would warrant me in bucking against such men of experience and influence as those men had, I concluded that the best thing for me to do was to sell the stone and not bid, and I made a contract to sell the stone and not bid.

Q. Did you make an effort to find out the character
681 of stone previously used by Green & Gaynor?

A. Only from hearsay.

Q. Did you ever hear from hearsay from Capt. Carter?

A. No, sir; he never told me about the Green & Gaynor stone, nor did he ever mention to me Green & Gaynor, that is my remembrance.

Q. His statement was in regard to the necessary plant, not the one now in use in these waters?

A. That is what he meant,—to show the difficulties attending the work and the amount of money required, and the contingencies arising from the appropriations not being forthcoming, though the work was going along,—on that line.

Q. Your testimony on that point was mainly as to Cumberland Sound, the difficulties that would attend the execution of the contract; how about Savannah Harbor?

A. Well, that the equipment for both Cumberland Sound,—

Q. That the equipment?

A. Which was necessary to carry out the work so as to do a certain amount required which was stated in the specifications.

Q. So that $400,000.00 covered the value of the plant for both improvements?

A. Yes, sir, that's my recollection.

Q. It was then not for Cumberland Sound alone?

A. No, sir, I did not so understand it, nor did I say that.

Q. I want it to go upon the record that it did cover both places in justice to the accused.

A. Yes, sir, I would not do an injustice to him or any other man.

Q. I am aware of it, Mr. Venable.

A. We had to do that amount of work whether or not the appropriation was forthcoming or not, to carry out a certain amount so stated in the specifications.

Q. Did you gather from Capt. Carter's statement that the

trestle to which he referred would have to be constructed
682 before the work was entered upon?; or it would become necessary later on?

A. As we filled out to it.

Q. It would not be an original expenditure before entering upon the execution of the contract?

A. I understood from him that the contract would not be executed unless this trestling was built and starting from shore as I understood it, going out.

Q. I am trying to time it.

A. My understanding was we would build it out as we filled in; we would build out on the fill.

Q. Then it would be a constant contingent expense not all entered into at once?

A. That is my understanding.

Q. The understanding that you got from that conversation with him?

A. Yes, sir.

Q. I will ask you one more question, Mr. Venable, when did you first see the advertisement calling for proposals upon these improvements?

A. It was a short time before I came down here; I came, I think, one day or two days before the letting.

Q. You saw the advertisement about six days before?

A. I don't know when I saw it; I came down a few days after I saw it; I don't know how long it had been running.

Q. I referred simply to when you first saw it?

A. That was a few days before I came.

Cross-Examination.

Questions by Mr. Charlton.

Q. Mr. Venable, who is the attorney of the Venable Construction Co. in Atlanta?

A. Attorney, the Hon. Hoke Smith.

Q. How long has he been attorney?

A. Since the organization of the company.

683 Q. Was he attorney of Venable Bros. previous to the organization of the company?

A. No, sir.

Q. He started with the corporation?

A. Yes, sir; he is not the attorney of Venable Bros. now.

Q. Simply the corporation?

A. Yes, sir, he is a stockholder and attorney for the Co.; he owns one third.
Q. You yourself are largely interested in it?
A. One third and my brother one third.
Q. And Mr. Smith the other one third?
A. Yes, sir, barring a share or two of the stock.
By the Court: I would like to ask the witness if he had seen the advertisement three or four weeks before the date of opening the bids, if it would have made any difference in the preparation of his bid?
A. I would have had ample time to have made preparation and have bid.
By the Court: Would you have had ample time to ascertain all the details, necessary details, about the construction of mattresses, so that you could have put in a bid in a satisfactory manner,—well matured?
A. I could not have put in a bid at any time satisfactory to myself, because I did not know which of the three classes or styles of mattresses could be used.
Q. Suppose the specifications had required a separate price to be stated for each style of mattress?
A. I would have had no hesitancy in bidding.

684 JAMES FOLEY a witness for the prosecution, having been duly sworn, testified as follows.

Direct Examination.

Questions by the Judge-Advocate.
Q. What is your name in full?
A. James Foley.
Q. What is your occupation?
A. Shipping business.
Q. What kind of shipping business, Mr. Foley.
A. Well, buying and selling ships, wrecking, etc.
Q. Buying and selling second hand vessels?
A. Yes, sir.
Mr. Charleston. Col. don't lead the witness.
Q. Well, what kind of ships did you buy and sell?
A. Sailing vessels principally.
Q. New or old?
A. Both.

Q. You bought both?
A. Yes, sir.
Q. How long have you been engaged in the business?
A. Eighteen or twenty years.
Q. Do you know anything about the value of the vessels owned by the Atlantic Contracting Company in the improvement of Savannah Harbor?
A. Yes, sir, I think I do.
Q. Have you seen the vessels they have in use?
A. Yes, sir.
Q. Do you know the number they have?
A. Yes, sir.
Q. And the names of the different boats?
A. Yes, sir.
Q. And the number of scows?
A. Not exactly the number of scows, no.
685 Q. You know enough of them to give your judgment as to the value of them?
A. I should say so.
Q. What in your judgment is their value?
A. Somewhere about $10,000.00.
Q. Did you know them in 1896?
A. Yes, sir.
Q. How long before that time had you known them?
A. Known the plant?
Q. Yes.
A. Well, I suppose since it came here, on and off.
Q. What was it value in your judgment, in 1896?
A. That's what I told, you,—$10,000.00.
Q. Ten thousand dollars, then that was not your present value that you estimated?
A. Somewhere about that.
Q. You stated that you deal in new and old vessels, what could that plant be put in entirely new for, vessels as good as those in use were when they were new?
A. Entirely new modern boats would be $60,000 or $70,000, I suppose.
Q. That would cover everything?
A. Yes, sir.
Q. Where were you in 1896, Mr. Foley?
A. Savannah, sir.
Q. Did you become aware that proposals were solicited through an advertisement for the improvement of Savannah Harbor?

A. Yes, sir.

Q. Did you make any application for specifications, as requested in the terms of that advertisement ?

A. Yes, sir.

Q. Do you remember when?

A. I thing about a day before the contract was let, 686 or somewhere about that.

Q. To whom did you make it?

A. Mr. Connolly.

Q. Who was Mr. Connolly?

A. Capt. Carter's secretary.

Q. Why did you make it to him?

A. Well, he was in the office, I always considered my business with him.

Q. Was Capt. Carter there?

A. I believe so, I don't know.

Q. You did not see him?

A. No, sir.

Q. Did you receive the copy that you requested?

A. Mr. Connolly started to give them to me but stated he would see about it; he went in another room and came back and said I could not have them, that I was supposed to be a Cuban filibuster and could not have them.

Q. Then the only reason given you for not furnishing you the specification was that you were a Cuban filibuster?

A. I suppose so.

Q. You didn't get them?

A. Yes, sir, I got them afterwards, the next morning.

Q. How did you happen to get them the next morning?

A. Capt. Carter sent for me that evening and asked me to come up to his office the next morning, that he wanted to see me.

Q. Did you see him?

A. Yes, sir; Capt. Carter sent for me that evening and requested me to come to his office the next morning, and asked me if I wanted a set of the papers; I told him yes, if I hadn't wanted them, I would not have come for them; Capt. Carter then handed them to me and asked me if I wanted any information about how the work was to be done, and said he would assist me in any way he could towards figuring or 687 anything else. He told me that the contract would require a big plant to do the work, something about $400,000.00.

Q. Then your application was for the Savannah Harbor only?
A. Yes, sir.
Q. You knew at the time that statement was made to you the value of the plant which was then in use?
A. That was my idea, yes, sir.
Q. Now, did you have any idea of bidding when you went for those specifications?
A. Well, I think not.
Q. Why did you want the specifications, Mr. Foley?
A. So as to know if I could get them; sometimes there are little contracts included in those.
Q. It was not the whole contract, it was simply to know if there were any little contracts which you could get in on?
A. That was all.
Q. Did you after having been refused by Mr. Connolly a set of those specifications, make any statement as to your probable action in the premises?
A. I told Mr. Connolly that I would get my attorney, Mr. Barrow, that evening or the next morning to come up and request them.
Q. Then Capt. Carter sent for you as you have testified to?
A. Yes, sir.
Q. Who sent,—after you had left their office, did Capt. Carter soon send for you?
A. That was in the morning that I went up for the papers; it was going on towards six o'clock that the Captain sent for me.
Q. Did he tell you why he sent for you?
A. No, sir, he simply asked me if I wanted a set of the papers.

688 *Cross-Examination.*

Questions by Mr. Charlton.
Q. Are you a capitalist on a small scale?
A. A very small scale.
Q. About how large a scale?
A. I don't know.
Q. Let me put it in another way, how much property do you return for taxation?
A. In Savannah, none; yes, I do, I return some shipping property.

Q. How much, did you return a month or two ago; before this year?
A. For this year, none in Savannah.
Q. Do you pay even a poll tax?
A. No, sir.
Q. You don't even pay that?
A. No, sir.
Q. When you went to get these specifications, that was all a joke, wasn't it? You didn't want them, didn't need them, and you had no idea of bidding?
A. No, I had no idea of bidding.
Q. Aint the truth of the matter that you bet drinks with a man that you could get them, they were so easy to get?
A. I bet I could get them.
Q. You bet drinks you could get them?
A. I don't think I did, no.
Q. You did bet you could get them?
A. Yes, sir.
Q. How much did you bet?
A. Nothing.
Q. Just for any bet, that you could get them if you wanted them?
A. Yes, sir.
A. As a matter of fact, you did get them?
A. Yes, sir, eventually I got them.
Q. Mr. Connolly thought you were a Cuban filibuster-
er?
689 A. Yes, sir.
Q. Well, are you?
A. Well, it is supposed so.
Q. Is Mr. Connolly?
A. I would not be surprised.

Re-direct Examination.

Questions by the Judge-Advocate.
Q. You have a financial standing at the banks, Mr. Foley?
A. Yes, sir.
Q. What bank do you transact business with?
A. The Chatham bank.
Q. What is your credit there,—do you know, with that bank?
A. Anything I want within reason.
Q. What is it that you call within reason?

A. $5,000.00.
Q. You could get $5,000.00 from that bank any time you wanted it?
A. Yes, sir.

Re-cross Examination.

Questions by Mr. Charlton.
Q. Which bank is that?
A. Chatham bank.
Q. On your own personal paper?
A. Not on my own personal paper; they don't lend money on personal paper.
Q. If you got an indorser worth $5,000, you can get $5,000?
A. I can take any person's paper and get it.
Q. By your indorsement, get $5,000?
A. I think so.
Q. How many vessels have you sold in the last few years?
A. I could not exactly say; it has not been all bought and sold in the vicinity.
690 Q. Has anything been bought and sold in this vicinity except an old wreck down the river for two or three hundred dollars?
A. I bought one in Key West.
Q. A wreck?
A. Yes, sir.
Q. How many have you bought in Savannah?
A. I could not say, very numerous.
Q. About one in the last five years—and that for $300?
A. No, sir.
Q. Did you buy those wrecks in the storm of 1893?
A. I bought several of them.
Q. They were not worth very much?
A. To me,—yes, sir.
Q. If you had waited a while you could have got them for nothing?
A. No, sir.
Q. Did you buy them on your own capital?
A. Yes, sir.
Q. Do you keep a bank account in the Chatham bank?
A. Yes, sir.

2nd Re-direct Examination.

Questions by the Judge-Advocate.

Q. You were asked by the counsel whether you attempted to get the specifications so as to show how easy it was to obtain them?

A. The general impression was it was a little difficult to get the papers up there, that's the understanding.

Q. Then your effort was not based upon the intention to show how easy it was for you to get them, but to show that you could get them although it was considered difficult?

A. I supposed I could get them.

Q. That is that you had the right to demand them?

A. I had the right that anybody else had in this country to go up and demand them.

Q. Then it was not to show how easy it was to get
691 them that you went there?

A. No, sir.

JOHN W. O. STERLY, recalled for the prosecution, previously sworn, testified as follows:

Direct Examination.

Questions by the Judge-Advocate.

Judge-Advocate: You will remember, Mr. Sterly, that you are still under oath on this case, when you are recalled from time to time.

Witness: Yes, sir.

Q. Have you the River and Harbor Act of July 13, 1892?

A. Yes, sir.

Q. Read the paragraph, making the appropriation for the improvement of Savannah river, Ga.

A. (Reading) "Improving Savannah River between Augusta and Savannah: continuing improvement, $35,000.

Q. Now, look at G. R., 13, 1892.

A. That paper is in evidence, that is the paper calling for the project of expenditure.

Q. Look at S. R., page 169. (Handing the witness the book) What is that?

A. It is a letter to the Chief of Engineers, under date of

July 27, 1892, in which Capt. Carter submits his project for the expenditure of $35,000 for the improvement of the Savannah river between Augusta and Savannah.

Q. Q. Look at S. R., 2, 1892.

A. That is a letter from the Chief of Engineers, dated August 3, 1892, approving the project for the Savannah river, Ga., between Savannah and Augusta.

Q. Look at S. R., page 225, what is that?

A. It is a letter from Capt. Carter to the Chief Clerk
692 of the War Department, inclosing a copy of the advertisement, inviting proposals for repairing and constructing wing dams and shore protection in the Savannah river below Augusta, Ga., and requesting authority to publish the same in the following official newspapers: 3 insertions in Chronicle, Augusta, Ga.; 3 insertions in Morning News, Savannah, Ga.; 1 insertion in Engineering Record, N. Y., and 1 insertion in Engineering News, N. Y., and also requests authority to print 200 copies of accompanying specifications.

Q. What is the date, did you say?

A. May 19, 1893.

Q. Look at S. R., 5, 1893, (Here paper is produced by witness)

Judge-Advocate: I offer in evidence and read this communication:—

"United States Engineer Office,
Savannah, Ga., May 19, 1893.

"The Chief Clerk of the War Dept.,
Washington, D. C.

(Through Brig. Gen. Thomas L. Casey, Chief of Engineers, U. S. A., Washington, D. C., and Col. Wm. P. Craighill, Corps of Engrs. U. S. A, Div. Engineer, S E Division, Baltimore, Maryland)

Sir:

I inclose herewith a copy of an advertisement, inviting proposals for repairing and constructing wing dams and shore protection in the Savannah river, below Augusta, Georgia, and and request authority to publish the same in the following official newspapers:

3 Insertions in Chronicle, Augusta, Ga.;
3 insertions in Morning News, Savannah, Ga.;
1 insertion in Engineering Record, New York, N. Y.;
1 insertion in Engineering News, New York, N. Y.;

I also request authority to print 200 copies of accompanying specifications.

Very respectfully,
Your obedient servant,

693 O. M. CARTER,
Capt. Corps of Engrs. U. S. A.

(2 enclosures)."

1st—Indorsement.

"U. S. Engineer Office,
9 Pleasant St., Baltimore, Md. May 24, 1893.

Respectfully submitted to the Chief of Engineers and recommended for approval.

WM. P. CRAIGHILL,
Colonel Corps of Engineers U. S. A."

2d, Indorsement.

Office Chief of Engineers,
U. S. Army. May 25, 1893.

Respectfully forwarded to the Chief Clerk of the War Department, with recommendation that the authority within asked for be granted. The specifications have been amended in this office.

By command of Brig. Gen. Casey,

H. M. ADAMS,
Major Corps of Engineers."

3rd—Indorsement.

War Department,
June 1, 1893.

Approved

DANIEL S. LAMONT,
Secretary of War.

Note: Two printed slips of the advertisement to be furnished this office for file.

694 4th—Indorsement.

Office Chief of Engineers,
U. S. A.
June 1, 1893.

Respectfully returned to Capt. Carter, inviting attention to the foregoing indorsements.

THO. LINCOLN CASEY,
Brig. Gen. Chief of Engineers.

Inclosures 1 and 2 accompanying."

Judge Advocate: The subsequent indorsements on this communication have reference simply to the auditing payment of the charges for advertising.

Counsel for the accused: What does the indorsement show about being received back in Savannah?; or what date did they receive it:

Judge-Advocate: June 2d—, received back June 2, 1893; the day after Sect'y Lamont had approved it. The inclosure referred to is received here June 2, 1893, is this, (Reading)

"United States Engineer Office,
Savannah, Ga., May 19, 1893.

"Sealed proposals for repairing and constructing spur dams and shore protection in Savannah River, Georgia, will be received at this office until 12 m. city time, on the 19th—day of June, 1893, and then publicly opened. Specifications, blank forms, and all available information will be furnished on application to this office.

O. M. CARTER,
Capt. Corps of Engrs. U. S. A."

The Court: What is the date of that?

Judge-Advocate: May 19, 1893, the same date as the communication from Savannah, asking for the authority to insert that advertisement in the papers named.

Judge-Advocate: S. R., page 230—"United States Engineer Office, Savannah, Ga., May 31, 1893.

General Casey, Chief of Engineers, Washington, D. C.

695 Authority to advertise for proposals improving Savannah River, below Augusta, was asked on May 19th,. Please wire me if it has been granted.

CARTER,
Engineers.

Official Business.
Paid Gov. Rate.
Copy by mail.

O. M. CARTER,
Capt. Corps of Engrs. U. S. A."

Q. When did the first advertisement appear? Look at page 256.

A. June 4, in the Savannah Morning News.

Q. How many insertions?

A. Three insertions, June 4, 5 and 18, 1893.

Q. When did it appear in the Augusta Chronicle?

A. June 5, 6, and 18, 1893.

Q. When did it appear in the Engineering Record, New York, N. Y.?
A. June 10, 1893.
Q. And when in the Engineering News, New York, N. Y.?
A. The 8th, of June, 1893.
Q. The bids were to be opened on the 19th, of June?
A. Yes, sir.
Q. What was the date of the first issue of the specifications, S. R., page 235?
A. June 7, 1893.
Q. Look at at page 214 of the Savannah book,—read it.
A. (Reading)

"Savannah, Ga., March 10, 1893.

"Mr. A. J. Twiggs,
Post-Office Box 195, Augusta, Georgia.
Dear Sir:—
In reply to your letter of the eighth instant, I have the honor to state that the specifications for the work of improving the Savannah River, below Augusta, have not yet
696 been prepared.

Very respectfully yours,
O. M. CARTER,
Capt. Corps of Engrs. U. S. A."

Q. S. R., 4, 1893 and S. R., 6, 1893,—give me both. (Here papers are handed to Judge-Advocate by witness) I offer in evidence, (Reading)

"A. J. Twiggs,
Consulting Engineer and General Contractor.
P. O. Box 195.
Augusta, Ga., Mar. 8, 1893.

"Cap. O. M. Carter,
U. S. Engineer,
Savannah, Ga.
Dear Sir:—
When do you think of letting the Savannah River work below Augusta? I am very anxious to get this work when it is let. I will be glad to bid on any river work or any small jobs that you may have in your district and beg that you put my name in your list for this class of work. With kind regards, &c.,

Yours very truly,
A. J. TWIGGS."

A. J. Twiggs,
Consulting Engineer and General Contractor,
P. O. Box 195,
Augusta, Ga., June 6, 1893.

Cap. O. M. Carter,
U. S. Engineer,
Savannah, Ga.

"Dear Sir:—

Mr. Wheeler, a foreman for Gaynor, Green & Co., was here a few days ago and said the Sav. River work below Augusta would be let on the 17th. If you have the forms 697 for proposals ready, will you please send them to me. I am anxious to bid on the work. I wrote you several days ago, but as I have not heard from you, presume you are away.

Yours very truly,

A. J. Twiggs."

Judge-Advocate: Page 235; I offer in evidence and read,

"United States Engineer Office,
Savannah, Ga., June 7, 1893.

Mr. A. J. Twiggs,
Post-Office Box 195, Augusta, Georgia.

Sir:

In answer to your letters of the first and sixth instants, I take pleasure in sending herewith one copy of the specifications for improving Savannah River, Georgia. Please consider the specifications carefully, and, if you desire to bid upon the work, notify me and I shall take pleasure in giving you all the available information concerning it and furnishing you with the two remaining copies of the specifications necessary to enable you to submit your bid. By direction and during the absence of Capt. Carter.

Very respectfully,
Your obedient servant,

J. W. O. Sterly,
Chief Clerk.

(One enclosure)"

Judge-Advocate: Give me S. R., 7, 1893. (The paper is handed by witness) I offer in evidence and read from the same party,

"Augusta, Ga., June 10, 1893.

"Capt. O. M. Carter,
U. S. Engineers,
Savannah, Ga.

Dear Sir:—

698 Yours with one form for proposal for the improvement of Savannah river, received. Please send me the other two. I want to bid on the work.

Yours very truly,
A. J. TWIGGS."

Judge-Advocate: Page 237. I read in evidence,

"United States Engineer Office,
Savannah, Ga., June 10, 1893.

"Mr. A. J. Twiggs,
Post-Office Box 195,
Augusta Georgia.

Sir:—

In compliance with request contained in your letter of the tenth instant, I send herewith two more copies of specifications for improving Savannah river, Georgia.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. Corps of Engrs. U. S. A
C.

(Two inclosures.)"

Judge-Advocate: S. R. 8, 1893—(Reading)

"Charleston, S. C., June 10, 1893.

"Captain O. M. Carter,
Corps of Engineers, U. S. Army,
Savannah, Geo.

Dear Sir:

Please send me the specification and blank forms of proposal for repairing and constructing spur dams and shore protection in the Savannah river, Georgia, also specification and blank form for the removal of the wreck of the barque "Undine" now lying in Savannah Harbor, Ga.

Yours most obedient,
COLIN MCK. GRANT.
Charleston, S. C."

699 Judge-Advocate: I offer in evidence the reply—(Reading)

"United States Engineer Office,
Savannah, Ga., June 14, 1893.

Mr. Colin McK. Grant,
Charleston, South Carolina.

Sir:

In answer to your letter of tenth instant, I send you herewith one copy of specifications for improving Savannah river, Georgia. Please consider the specifications carefully and if you desire to bid on the work, notify me and I shall take pleasure in giving you all the available information concerning it, and furnishing you with the two remaining copies of the specifications, necessary to enable you to submit your bid.

Verv respectfully,
Your obedient servant,
O. M. CARTER,
Capt Corps of Engineers U. S. A.

(One enclosure)" C.

Judge-Advocate: Whose writing is that Mr. Sterly, if you know, (referring to indorsements on letters to Colin McK. Grant)

A. Mr. Connolly's.

Q. Do you know that writing?

A. Yes, sir.

Judge-Advocate: (Reading the above) "One sent "Undine" sent June 10— one single S. R. sent June 14." In the handwriting of Mr. Connolly, as the witness has testified, that is a memorandum in pencil on the letter. Look at S. R. 11, 1893. I read in evidence from the same party:—

"Charleston, S. C.,
June 15, 1893.

Captain O. M. Carter,
Corps of Engineer, U. S. A.
Savannah, Georgia.

"Dear Sir: Your letter to hand with one copy of pro-
700 posal for improving Savannah River, Georgia. You will please send me the other two copys of blank proposal as I intend to bid for the work.

Yours most obedient,
COLIN MCK. GRANT."

Judge-Advocate: To which this response was made;—(Reading)

"United States Engineer Office,
Savannah, Ga. June 17, 1893.

Mr. Colin McK. Grant,
Charleston, South Carolina.

Sir:

In compliance with your request of the fifteenth instant, I send you herewith two more copies of specifications for improving Savannah River, Georgia.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. Corps of Engrs. U. S. A.

(Two enclosures.)".

Judge-Advocate: Please enter on the record the fact that the letter from Colin McK. Grant, Charleston, S. C., bearing date of June 15, 1893, is stamped as received in the Engineer Office in Savannah, Ga., June 17, 1893, the same date the copies were sent.

Mr. Rose: It looks as if it was received on the 15th, and the reply was not sent for two days, as a matter of fact, it was sent the same day.

Judge-Advocate: It was briefed on the outside as having been written on June 17th,—that is apparently a clerical error.

Judge-Advocate: S. R. 9, 1893; this is a postal from Monroe, N. Y., and is as follows:

701 "Monroe, N. Y., June 10, '93.

"Dear Sir:—

Please send me plans and specifications for wing dams or any other work you may have by return mail and oblige,

Yours respectfully,
DAVID V. HOWELL,
Monroe, Orange County, New York."

Judge-Advocate: Marked in pencil, "Sent one."

Q. Whose handwriting is that, if you know.

A. Mr. Connolly's.

Judge-Advocate: Page 239; I offer this in evidence.

"United States Engineer Office,
Savannah, Ga., June 14, 1893.

"Mr. David V. Howell,
Monroe, Orange County, New York.

Sir:

In reply to your postal card of the 10th, instant, I send herewith one copy of specifications for improving Savannah

River, Georgia. Please consider the specifications carefully, and, if you desire to bid on the work, notify me and I shall take pleasure in giving you all the available information concerning it, and furnishing you with the two remaining copies of the specifications necessary to enable you to submit your bid.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. Corps of Engrs. U. S. A.

(One enclosure.)" C.

Judge-Advocate: Look at page 242; I offer in evidence, (Reading)

702 "United States Engineer Office,
Savannah, Ga., June 16, 1893.

Col. John F. Gaynor,
President The Atlantic Contracting Company,
84 Bay Street, Savannah, Georgia.

Sir:

I send you herewith in response to your oral request of this day, one set of specifications for constructing and repairing wing dams, and shore protection in Savannah river, near Augusta, Georgia.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. Corps of Engrs. U. S. A.

(Three enclosures)" C.

Judge-Advocate: It appears from this abstract that five applicants received originally one copy of the specifications, two received one copy of the specifications, two received two additional copies, one received a full set of three, John F. Gaynor, President. That was on June 16th, three days before the bid was to be opened; the bids were to be opened June 19th.

Look at page 249 (Reading) I offer in evidence and read the following communication:

"United States Engineer Office,
Savannah, Ga., June 19, 1893.

Brig. Gen. Thomas L. Casey,
Chief of Ebgineers, U. S. A.
Washington, D. C.

General:

I have the honor to transmit herewith all proposals received for constructing and repairing wing dams and shore

protection in Savannah river, near Augusta, Georgia, and
703 to recommend the acceptance of the bid of Albert J. Twiggs, of Augusta, Georgia, he being the lowest responsible bidder.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. Corps of Engrs. U. S. A.

(Four enclosures.)"

"Abstract of proposals for constructing and repairing wing dams and short protection in the Savannah river, below Augusta, Georgia., opened on June 19, 1893, by Capt. O. M. Carter, Corps of Engineers, U. S. Army,

Number of Bidder	Name of Bidder.	Residence.	Price for Mattresses per cubic yrd.	Stone	Total
1	*Albert J. Twiggs	Augusta, Ga.	$0.74	$L.74	$12,520
2	The Atlantic Contract Company, John F. Gaynor, President.	New York N. Y.	0.87	1.80	12,825
3	**Colin McK Grant	Charleston S.C.	1.00	2.40	17,100

Amount available, $22,000.

*Bid recommended for acceptance, he being the lowest responsible bidder for the best and most suitable services.

**Informal Bid.

I hereby certify that the above Abstract of Proposals is correct.

O. M. CARTER,
Capt. Corps of Engrs. U. S. A.
Savannah, Ga., June 19, 1893."

Judge-Advocate: That is a copy, gentlemen, of the abstract.

Mr. Rose: No objection to it.

Judge-Advocate: No objection to it as the abstract?

Mr. Rose: None at all.

704 Judge-Advocate: I offer in evidence the three proposals referred to in the abstract just read. (To witness) Look at those papers and if you can, identify them as from the official record.

Witness: No. 1 is the proposal of Albert J. Twiggs for the improvement of Savannah river, Georgia; No. 2 is the proposal of The Atlantic Contracting Company, John F. Gay-

nor, President, for the improvement of Savannah river, Georgia; No. 3 is the proposal of Colin McK. Grant, for the improvement of Savannah river, Georgia. These are the articles of agreement, dated July 5, 1893, with Albert J. Twiggs of Augusta, Georgia, for repairing and constructing wing dams and shore protection in Savannah river, Georgia, this is the contractor's bond, $20,000, of Albert J. Twiggs; this is the supplemental articles of agreement, entered into Nov. 6, 1893, between O. M. Carter, Capt. Corps of Engrs. U. S. A., of the one part and Albert J. Twiggs, Augusta, Ga., of the other part, for repairing and constructing wing dams and shore protection in Savannah river, Georgia; that is a copy of an extension granted of 14 days, Sept. 28, 1893, and this is a copy of an extension granted for 16 days, on October 26, 1893.

Judge-Advocate: The accused calls my attention to the fact that there was a clerical error in the abstract of proposals, forwarded by him to the Chief of Engineers,—that while he had placed above the column "Mattresses", that he should have put "Fascines",—that it is a clerical error and that only bids were called for fascines under this provision of the specifications, which I will read and have go on the record in connection with that statement. —(Reading)

"Fascines.—All fascines will be made of live brush, of cedar, water oak, myrtle, sweet gum or any other variety of wood approved by the Engineer Officer in charge. The fascines will be from twelve (12) to twenty (20) feet in length,
and must be compressed tightly by an approved form of
705 choker, to a diameter of nine (9) inches at intervals of
two (2) feet, where they must be bound firmly with wire or tarred rope of approved strength. The brush used shall be as straight and well trimmed as can be obtained; the fascines shall be carefully and thoroughly made and handled with care. They are to be placed in the works singly, or in mattresses, in such places, quantities and manner, as the Engineer Officer in charge may direct. When made into mattresses, the fascines will be packed together and secured by binding poles joined by ties of wire or tarred rope not more than two (2) feet apart, the form and dimensions of mattresses and the method of their construction to be such as the Engineer Officer in charge may approve. For measurement the fascines shall be piled on shore or on barges in such way as the Engineer Officer in charge may direct."

Judge-Advocate: I offer in ecidence the proposals of the three parties named and call the attention of the Court to the fact that the proposals are to furnish seventy five hundred cubic yards more or less of fascines at seventy-four cents per cubic vard, is that satisfactory gentlemen?

Mr. Blair: Yes, sir.

Judge-Advocate: A copy of that will be attached to the record and marked Exhibit 51.

Judge-Advocate: The proposal of The Atlantic Contracting Company, John F. Gaynor, President,—a copy of this will be attached to the record and marked, Exhibit 52. The proposal of Colin McK. Grant, a copy of this will be attached to the record and marked, Exhibit 53, and also the contract entered into July 5, 1893, between O. M. Carter, Capt. Corps of Engrs. U. S. A. of the one part and Albert J. Twiggs, Augusta, Ga., of the other part, for repairing and constructing wing dams and shore protection in Savannah river, Ga.,—a copy of this will be attached to the record and marked, Exhibit 54.

Judge-Advocate: I read, "Subject: Extension of time, contract of A. J. Twiggs.—

706 "United States Engineer Office,
Savannah, Ga., Sept. 26, 1893.

Brig. Gen. Thomas L. Casey,
Chief of Engrs., U. S. A.,
Washington, D. C.

General:

The contractor for the Savannah River work, Mr. A. J. Twiggs, was delayed during the months of August and September, fourteen days, on account of high water, and I have the honor to recommend that the time for the completion of his contract be extended fourteen days, and that no deduction for the expenses of inspection and superintendence during such extension may be made.

Very respectfully,
Your obedient servant,
O. M. Carter,
Capt. Corps of Engrs., U. S. A."

1st Indorsement.

Office Chief of Engineers, U. S. Army,
September 28, 1893.

Respectfully returned to Capt. Carter, Corps of Engineers,

approved. When such record as may be necessary has been made, this paper will be returned to this office.

By command of Brig. Gen. Casey.

THOS. TURTLE,
Major Corps of Engineers.

(Inclo. 14 of 3028.
True copies,

O. M. CARTER,
Capt. Corps of Engrs., U. S. A."

Judge-Advocate: (Reading)

707 Judge-Advocate: (Reading)

"Subject, Extension of A. J. Twiggs' contract, Savannah River Work.

United States Engineer Office,
Savannah, Ga., Oct. 23, 1893.

Brig. Gen. Thomas L. Casey,
Chief of Engineers, U. S. Army,
Wasington, D. C.

General:

The contractor for the Savannah River work, Mr. Albert J. Twiggs, has asked for an extension of his contract for thirty days. On my recommendation the time for the completion of his contract was extended 14 days (See inclo. 14 of 3028). I have the honor to recommend that the time for the completion of his contract may be further extended 16 days, but that all expenses of inspection and superintendence during such inspection may be deducted from monies found to be due him, as provided in the specifications for the work.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. Corps of Engrs., U. S. A.

1st indorsement.

Office Chief of Engineers, U. S. Army,
October 26, 1893.

Respectfully returned to Capt. Carter, Corps of Engineers, approved. When such record as may be necessary, has been made, this paper will be returned to this office. By command of Brig. Gen. Casey,

THOS TURTLE,
Major Corps of Engineers.

Inclo. 15 of 3028.
True copies,

O. M. CARTER,
Capt. Corps. of Engrs., U. S. A."

708 Judge-Advocate: I also offer in evidence the supplemental articles of agreement entered into Nov. 6, 1893, between O. M. Carter, Capt. Corps of Engineers, U. S. A., of the one part, and Albert J. Twiggs, Augusta, Ga., of the other part, for repairing and constructing wing dams and shore protection in Savannah River, Ga. A copy of this will be attached to the record and marked Exhibit 55.

Mr. Rose: Will you get the original specifications that were sent to Washington, S. R., 5, 1893. It was stated in the indorsement of S. R. 5 that the specifications had been amended in the Chief of Engineer Office, as I recollect Col. Barr reading that.

Judge-Advocate: It was so stated.

Cross-Examination.

Questions by Mr. Rose.

Q. Will you be kind enough to find, if you can, in there, when that amendment was made? I will help you, if you will allow me. Is not that the amendment which I will read afterward, that was made in Washington, that interlineation in black ink?

A. I don't know, it resembled very much my handwriting.

Q. If it was your handwriting, it was not put in Washington by you?

A. No, its like this writing here (indicating)

Q. I am not as much an expert in your handwriting as you are yourself. In what papers were the advertisements directed to be made in that letter and how much in each paper?

A. Three times in the Chronicle, Augusta, Ga., three times in the Morning News, Savannah, Ga., once in the Engineering Record, New York, and one in the Engineering News, New York .

Q. That request was approved by the Department, was it not?

A. Yes, sir.

Q. In those papers and for the number of times you have mentioned in each paper?

A. Yes, sir.

709 Q. Was the advertisement printed in those papers and the number of times therein stated?

Judge-Advocate: I think the record shows it was, I read that it was in compliance with your request.

Mr. Rose: Just in that way. It wont do any harm to state it again.

Judge-Advocate: I have no objection.

Witness: Yes, sir.

Q. Was a copy of the proposed advertisement sent to Washington with that paper you have in your hand, as one of the inclosures?

A. Yes, sir.

Q. Did that come back to Savannah with the approval of the War Department?

A. Yes, sir.

Q. So that the advertisement so approved was the one actually published in the newspapers?

A. Yes, sir.

Q. You read or there was read a letter dated March the 10th, to A. J. Twiggs, in which it was stated that the specifications had not yet been prepared, do you remember that letter?

A. Yes, sir.

Q. That was true, was it not, at that time the specifications had not been prepared?

A. Yes, sir.

Q. This paper, S. R. 5, was received back in Savannah on what date?

A. The second of June.

Q. The second of June and the advertisements were put in the various papers immediately afterwards, were they not?

A. Yes, sir.

Q. In the first publication and the first issue after the date of their receipt here in Savananh?

710 A. Yes, sir.

Judge-Advocate: Was anything ever stated in the letter making the request, for authority to advertise, asking for approval of the form and substance of the advertisement?

Mr. Rose: Does not the letter show for itself?

Judge-Advocate: No, sir, it asks authority to publish.

Witness: The letter asks for authority to have the inclosed advertisement printed.

Judge-Advocate: Does it say anything about approving its form and substance?

A. No, sir.

By the Court: Besides the projects for expenditure which you have mentioned in your testimony, were there projects also prepared for the other works of Harbor and River Improvements in this district?

A. What other projects were there prepared?

By the Court: What different kinds of projects besides the projects for expenditure?

A. For the project of expenditure and how the work should be carried out.

By the Court: Well, preceding the project for expenditure, what project was prepared for any work? A project for expenditure is prepared immediately upon receipt of notice of an appropriation for work, is it not?

A. Yes, sir.

By the Court: Now, preceding all of those projects, was any other project prepared?

A. Yes, sir.

By the Court: What was that project for?

A. It was a project for the improvement of Savannah River.

By the Court: What did it state generally, what was its scope?

A. That I could not tell without having the records here.

711 By the Court: In general terms?

A. In general terms it provides for the improvement of the stream between Savannah and Augusta, at a certain cost and giving estimates of the quantities that would be needed.

By the Court: Quantities of what?

A. Quantities of materials that would be needed for building the dams.

By the Court: Did it state the general engineering method to be pursued in the improvement?

A. Yes, sir.

By the Court: Now, can you produce the projects for the improvement of Savannah River and Cumberland Sound, which were of force in 1896,—and in which the projects for expenditure were submitted and made and under which the expenditures were made?

A. Yes, sir.

By the Court: I would like to see those and see what they specified regarding the use of mattresses, the height to which

the mattress construction was to be carried in the breakwater or jetty at the entrance to Cumberland Sound, and at the entrance to Savannah River.

Here the court at 1.30 o'clock p. m. took a recess to enable the witness to get the papers asked for.

Court met pursuant to recess at 1.55 o'clock p. m.

Present: All the members of the Court and the Judge-Advocate, the accused, his counsel and reporter, G. T. Cann, were also present.

JOHN W. O. STERLY, on the witness stand, testified as follows:

Witness: I brought all the papers over, Major, in which these projects were in operation, but as I am not an engineer, I cannot explain them.

By the Court: Have you the original projects?

A. I have the original projects.

712 By the Court: That was approved by the Chief of Engineers and the Secretary of War?

A. These are the printed copies.

By the President: That is the report of the Secretary of War?

A. The report of the Chief of Engineers.

By the President: The report of the Chief of Engineers and the Secretary of War?

A. Yes, sir.

By the Court: Is not the original copy, the original project on file in the office among the correspondence?

A. Yes, sir, I didn't know you wished the original copies.

By the Court: The printed copies as they appear in the annual report, are not always correctly and literally quoted from the original contract; they are simply outlined in general terms for the purpose of the annual report.

Mr. Blair: Perhaps Capt. Carter can tell from an inspection.

Judge Advocate: You can get the original project?

A. Yes, sir.

By the Court: These are important projects of improvement; they are prepared sometimes by a Board of Engineers and sometimes by the local Engineer, approved by the Secretary of War, and under that general project of improve-

ment, all these improvements are made, and it is proper to know what the method, as outlined is.

Judge-Advocate: I think I understand what the member requires, and I will see that it is hunted up and brought before the Court.

Mr. Blair: We have it, if the Court please; is this what you desire, Major,—that that is marked in lead pencil. (Here Appendix M of the Annual Report of the Chief of Engineers for 1896 is handed to Major Stanton)

Major Stanton: That is the information I desire. This is for Cumberland Sound, I would like to see the same pro-
713 ject for Savannah Harbor.

Judge-Advocate: Are you satisfied with seeing the printed report, or would you like the original paper.

Major Stanton: I am satisfied with this and desire to have it read.

Judge-Advocate: Do you desire to have it read, any part of it?

Major Stanton: I do.

Judge-Advocate: You have marked the parts you desire read?

Major Stanton: It is marked, as marked by Captain Carter.

Judge-Advocate: This is an abstract from the report of the Board of Engineers, dated Savannah, Ga., December 18, 1895, on page 1292 of Appendix M of the Annual Report of the Chief of Engineers for 1896, and the extract desired to be read is this;

By the Court: This regards what improvement?

Judge-Advocate: For the improvement of Cumberland Sound.

(Reading) "The following type of jetty is proposed: The foundation and apron courses should be of brush mattresses 100 feet in width and loaded with rip-rap stone. The ultimate jetty section should be composed of a foundation of brush mattresses, with a load consisting of a hearting of small stones covered with heavier stone. In going sea-ward the covering stone should increase in weight from 1,000 pounds to five tons as the low water depth increases from zero to twelve feet. Beyond that depth still heavier stone should be used. The side slopes should be as steep as such stone can stand. An ultimate crest width of ten feet at mean high water is sufficient:

Estimates:

425000 sq. yds, brush mattresses, at $1 per sq. yd..	$425,000
300000 cu. yds. of second class stone at $3.25 per cu. yd.....	$975,000
125000 cu. yds. first class stone at $6 per cu. yd....	$750,000
Engineering and contingencies.....	$200,000
Total.....	$2,350,000

714 Judge-Advocate: This report is signed by Peter C. Hains, Col. Corps of Engineers, Thomas H. Hanbury, Major Corps of Engineers, W. M. Black, Capt. Corps of Engineers, Frederic V. Abbot, Capt. Corps of Engineers, O. M. Carter, Capt. Corps of Engineers, Harry Burgess, Additional Second Lieutenant Corps of Engineers, Recorder and Brig. Gen. W. P. Craighill, Chief of Engineers, U. S. A., is the person to whom it is addressed. The accused desires in explanation of this that the charts shall be submitted to the Court, giving certain information when the chart is produced.

By the Court: I would like to inquire if that report is approved by the Chief of Engineers and the Secretary of War.

Judge-Advocate: I presume that would in the original report; this is an appendix from which I read, and that is not referred to in the appendix.

By the Court: The report has no force until it has received such approval, therefore, the original would be better.

Judge-Advocate: In that view I will have the original produced at our session tomorrow morning.

By the Court: And the same information regarding the mouth of the Savannah River.

Mr. Rose: The Savannah Harbor, Major.

Here the court at 2.5 p. m. o'clock adjourned until tomorrow morning Jan. 29th—at 11 o'clock a. m.

THOMAS F. BARR,
Col. & Asst. Judge Adv. Genl., Judge Advocate.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

United States of America
vs.
Oberlin M. Carter *et al.*
} In Equity No. 25980

Appealed April 28, 1908 to U. S. Circuit Court of Appeals for Seventh Judicial Circuit.

Identified as Volume 3 of Transcript of record on appeal.

Dated, Chicago, Illinois, this 11th day of September, A. D. 1908.

H. S. STODDARD,
Clerk.

(Seal)

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

United States of America
vs.
Oberlin M. Carter *et al.*

} Appeal No. 1534 and Cross-Appeal No. 1535 at Oct. Term 1908.

Appealed May 26, 1909, to the Supreme Court of the United States. Identified as Volume 3 of Transcript of Record on Appeal.

Dated, Chicago, Illinois, this 12th day of June, A. D. 1909.

EDWARD M. HOLLOWAY,
Clerk U. S. C. C. of Appeals.

(Seal)

VOL. 4

TRANSCRIPT OF RECORD.

(Volume 4 of record includes testimony in Vols. 4, 5, 6 and 7 of original Court Martial record.)

Pages 1575 to 2116.

IN THE

Supreme Court of the United States

No.

THE UNITED STATES OF AMERICA,

Appellants,

vs.

OBERLIN M. CARTER, LORENZO D. CARTER, I. STANTON CARTER, HORACE G. STONE, NATHANIEL C. SEARS, THE INTERNATIONAL AUDIT COMPANY, ROBERT NELSON, AND LYMAN E. COOLEY,

Appellees.

Appeal from the Circuit Court of Appeals of the United States for the Seventh Circuit.

5 United States Court Room,

Savannah, Ga.,
January 29th, 1898.

Court met pursuant to its adjournment of yesterday at
even o'clock a. m.
President: All the members of the Court and the Judge-
dvocate.
The accused, his counsel, and the Reporter, W. O. Tarver,
re also present.
The President: The Court will come to order.

LBRIDGE R. CONANT, a witness for the prosecution, being
duly sworn, testified as follows:

Direct Examination by the Judge-Advocate.

Q. What is your full name?
A. Elbridge R. Conant.
Q. What is your place of residence?
A. Savannah, Ga.
Q. What is your profession?
A. Civil Engineer.
Q. Where did you graduate?
A. Massachusetts School of Technology, Boston.
Q. In what class?
A. 1889. I wish to modify that in this: I was not a grad-
te. I never took a full course there, but a special course
engineering, intending to resume my studies another year,
t didn't go back.
Q. You have been in the service of the United States in
s engineering district?
A. Yes, sir.
Q. When were you first so employed?
A. October 10, 1892.
Q. By whom?
5 A. By Capt. O. M. Carter.
Q. What was the nature of your first employment?
A. As a surveyor on work at Cumberland Sound, Ga. The
ture of the work was instrumentally in locating mattresses
at were sunk, in locating ranges, setting tide gauges, and
acting in the capacity of Inspector when called upon by Mr.
lber, who was in charge of that work.

Q. You were at times, then, performnig the duty of an Inspector?

A. Yes, sir; rather infrequently, because he was on the ground nearly all the time.

Q. When acting as Inspector, you became familiar with what details of the work?

A. With more especially the sinking of the mattresses,—placing them on the range, so as to have the correct alignment, and in seeing that the stone deposited on them was placed on the mats, and that they were sunk in the proper shape.

Q. Did your duties as Inspector lead you to consider any other proposition than that they were properly sunk?

A. I can hardly say that I was called upon to inspect otherwise. The material, as a general thing, was inspected previous to its going into the work by Mr. Felber himself.

Q. That is as to the construction of the mattress.

A. Yes, sir.

Q. They had been inspected before you saw them?

A. I had seen them, but I would not consider myself that I was an inspector of the construction of the mattresses.

Q. You then inspected them as proper mattresses when they were sunk if you had anything to do with passing upon them at all?

A. Yes, sir.

Q. You knew the way they were constructed?

A. Yes, sir.

Q. You knew how the fascines of which they were built were made up?

A. Yes, sir.

Q. Describe one of those fascines.

717 A. I made frequent visits to what is called the brush camp where the fascines were made, in order to take the time or the number of men employed by the contractor, and, in that way, familiarized myself with the construction of fascines. The method was this: A squad of men would cut down brush, lop the limbs from trees, or obtain the same in either way; then another squad would take this brush, and place it on racks similar to several saw-horses placed in line; then perhaps the same party, or another, would take the choker and bind this brush together, and, at the same time, when it was held taut, wrap around it either wire or twine or cord, which, however, was employed in so doing in the case there, if my memory is correct, was the,—I cannot

give it the correct name,—but a tarred yarn, or something similar, of such strength that it would hold them together.

Q. Do you remember how far apart this yarn was?

A. No, sir; I do not. This being so long ago, and that being my first experience with the work, I cannot say whether it was tied at two foot intervals or three foot intervals.

Q. Can you remember about the diameter of the fascine after it was constructed?

A. My impression is that the diameter of the fascine, when delivered preparatory to putting it into the mattress, would be about nine inches; some would be more than nine inches, undoubtedly; some might be less,—I dare say would. The average diameter of these fascines was about nine inches to the best of my memory.

Q. Of what were they constructed?

A. They were constructed—You mean the special kind of brush?

Q. The material?

A. The material was brush. Much of it was cut directly as it grew. Some of it might have been lopped from trees; that is, the limbs from trees cut. It was an aggregation of brush.

Q. The brush, just as it was cut, was put on these horse and choked?

A. As a general thing, I consider that this brush was
718 put in the fascine as it was cut. I dare say, in some instances where limbs protruded to make it very rough, they were lopped off, but the brush I may say was put into the fascines in its entirety.

Q. Where were you next employed?

A. I was next employed at Jekyl Creek, near Brunswick, Ga., on a small contract.

Q. Whose contract was that?

A. I think it was Mr. E. J. Gaynor's, Mr. Edward Gaynor.

Q. Who had the contract at Fernandina where you had been employed?

A. The same gentleman.

Q. Had his work there been completed?

A. Yes, sir.

Q. You were there as Inspector or what?

A. When I went to Jekyl Creek I was inspector. At Cumberland Sound, my rank was surveyer. I was in charge of the Jekyl Creek work while I staid there. From there, as you

asked me, I went as Inspector on one of the dredge boats on the Savannah River.

Q. Where next?

A. My next employment was at Augusta, Ga.

Q. Do you remember about the time you went there?

A. August 2, 1893.

Q. Under what instructions?

A. Under instructions from Capt. O. M. Carter.

Q. Were those instructions written or oral?

A. I had both, both written and oral.

Q. Have you with you the written instruction that he gave you?

A. No, sir; I have not.

Q. What has become of them?

A. The instructions that I received, along with other memoranda, was destroyed on the completion of the work. I turned over such as the office called for, and destroyed the rest.

Q. (Handing witness letter book) Read that, just to identify it. Are those the instructions given you?

A. Yes, sir.

719 Judge-Advocate: I offer in evidence and read from page 263½, letter-book, Improving Savannah River, Georgia, the following:

"Subject: Instructions for Mr. E. R. Conant, Inspector.

"U. S. Engineer Office.

"Savannah, Ga., August 2nd, 1893.

"Assume summer low water as 5.'5 on bridge gauge.

"Remove all rock and fascines from old dams in channel "at Blue House bar; rock to be piled up on barges for meas- "urement; fascines to be bound for measurement, or esti- "mated as in such condition. Fascines must be of two "lengths, twelve feet and twenty feet. All others must be "rejected. The brush must be free from limbs and choked "absolutely tight at 2' intervals or less. If this is not done, "fascines will be rejected.

"Each fascine must be staked to bank by four stakes 3" in "diameter at small end, and 6' long for bottom layer, and "one foot additional length for each extra course. These "stakes must be driven down to their full length and flush "with fascines.

"All rock must be placed in work by hand or pitched. The smallest face for any stone to measure 4".

"The contractor will provide all gauges, ranges, etc., as

"well as labor to set them. Banks must be carefully cut to "a slope of at least 1 to 1½ where shore protection is used. "This must be uniform.

"O. M. CARTER,
"*Capt. Corps Engineers U. S. A.*"

Q. What additional instructions did you have?

A. Besides these instructions, I was given a copy of the specifications and Capt. Carter, went over these specifications with me en route to Augusta,—and I think on the same date, that or the 3rd of August,—and explained to me
720 several of the paragraphs, if not all in the specifications, telling me what he desired, and explaining them in prehaps a little more detailed order than you have read.

Q. What did he state that he desired?

A. He stated that the work before this had been badly damaged by heavy freshets, and that demanded my instructions to be carried out and the specifications to be carried out in full on that contract.

Q. Did you examine the specifications carefully?

A. I did, sir.

Q. I will ask you if in connection with this letter of instructions fro Capt. Carter, you considered the specifications in relation to the character of stakes to be used? I ask if your attention was ever directed to that feature of the specificaitons in relation to the use of stakes?

A. I don't remember of such, but I do remember of this statement in my orders—instructions—I cannot remember of this being brought up, this particular feature of the stakes.

Q. That never, then, attracted your attention?

A. I cannot say now that it did. It might have at the time, but I don't recall that.

Q. You were governed in your actions by the instructions you had received from Capt. Carter?

A. Yes, sir.

Judge-Advocate: I offer in evidence, or rather, as it is already in evidence, I will read in this connection the following from the specifications: "When laid in shoal water, or "when required by the Engineer Officer in charge, the fas-"cines will be fastened to the ground by stakes. There will "be, when stakes are used, at least two stakes for each fas-"cine, or for each foot in length of mattress. These stakes "shall be at least five feet long for bottom layers and
721 "six feet long for any upper layer, and must be driven "until their heads are flush with the brush."

I read also paragraph "38. Fascines.—All fascines will be "made of live brush of cedar, water oak, myrtle, sweet-gum or "any other variety of wood approved by the Engineer Officer "in charge. The fascines will be from twelve (12) to twenty "(20) feet in length, and must be compressed tightly by an "approved form of choker, to a diameter of nine (9) inches "at intervals of two (2) feet, where they must be bound "firmly with wire or tarred rope of approved strength. The "brush used shall be as straight and well trimmed as can be "obtained; the fascines shall be carefully and thoroughly "made and handled with care. They are to be placed in "the work singly, or in mattresses, in such places, quantities "and manner, as the Engineer Officer in charge may direct. "When made into mattresses the fascines will be packed "together and secured by binding poles joined by ties of "wire or tarred rope not more than two feet apart. The "form and dimensions of mattresses and the method of their "construction to be such as the Engineer Officer in charge "may approve. For measurement the fascines shall be piled "on shore or on barges in such way as the Engineer Officer "in charge may direct."

Q. Now, as to the stakes driven, you were governed in your superintendence of the performance of that contract by these written instructions?

A. Yes, sir.

Q. And your demand of the contractor was a compliance with these instructions, as you understood them?

A. I cannot say that my demand of these instructions was entirely carried out. At first I did demand such to be
722 carried out, but circumstances were such that it was impossible in certain portions of the work to drive the stakes into the ground at the length specified there. The heads would become mashed before they would be driven to their entire length. Where they could be driven, and the ground was sufficiently soft, or comparatively soft, they were driven to their full length. In certain sections, where the ground was very hard, they were not driven to their full length.

Q. On account of the hardness of the earth?

A. Yes, sir; it was a clay bank.

Q. This was on the shore protection?

A. On the shore protection of the works.

Q. Did Capt. Carter frequently inspect the works while you were in charge?

A. Yes, sir.
Q. Did he give any instructions in regard to these stakes?
A. Yes, sir.
Q. What instructions?
A. I called his attention to the difficulty in driving the stakes as he required. This was when we were first starting that work, and he could not agree with me exactly; he thought that it could be done, and I remember in his remarks, of his mentioning the possibility of getting a hand pile driver and driving them if they could not be driven with a maul, but this was never put into operation. Where they were driven by mauls, they were only driven to such depth as they could be.
Q. Were they then made flush with the surface?
A. Not in every case.
Q. Were any instructions given as to making them flush with the surface
A. Instructions are there printed. If it had been possible to drive them the full length, I should have demanded it, 723 but not being able to drive these stakes to the full length instead of chopping off the top, which was sometimes but not always done, we left a projection of six or eight inches above the surface, which I considered of benefit to the work.
Q. To that extent you exercised your own judgment?
A. I exercised my judgment, but called Capt. Carter's attention to the fact that I had exercised my judgment.
Q. You saw the first fascines constructed there?
A. Yes, sir.
Q. Where did you see them?
A. I saw them at the brush camp which was then situated about five miles below the City of Augusta, in close proximity to the work. Capt. Carter visited this brush camp on his first visit to Augusta, and I was with him at the time.
Q. That was your first visit?
A. Yes, sir, my first visit—the first day I arrived in Augusta.
Q. Were any fascines completed and ready for use?
A. There were some.
Q. How many?
A. To the best of my memory, a few; perhaps 75 or 100; perhaps only 50.
Q. Who was in charge of the laborers in constructing them, do you know?

A. I cannot remember. It is my impression they were all colored,—to the best of my memory.

Q. The Foreman and laborers?

A. Yes, sir, to the best of my memory.

Q. Do you remember how many were engaged in the work?

A. That day, I do not remember, but after that, from the time I assumed charge, I kept a general record of the number of employees, and made a ten-days return of such to the Office.

724 Q. Compared with the fascines with which you had been familiar, how did these fascines appear to you that you saw there?

A. The fascines that I saw on my first visit; I remember this, that at the time I understood that the contractor had a wrong idea of what was required in the way of fascines. It seemed that he thought it best to get a large amount of fine material and tie that together, instead of getting much wooded material, in the fascine. Now that was the fascine I saw on my first day. It was of a finer character than the fascines I had been used to on previous work.

Q. A better fascine than you had seen at Fernandina?

A. No, sir; I cannot consider it such, because the material in it was different; it was nothing but fine twigs, instead of getting branches and wooded material, whereas, at Fernandina, it was the reverse; more wooded material than fine.

Q. How as to its being choked and tied?

A. I remember that it was choked and tied, but I cannot remember whether it was tied,—I cannot remember the spacing between the binders.

Q. Do you remember what was used to tie the brush with?

A. I do not. I do not remember whether it was wire, or whether it was the same character of string—lath twine.

Q. Was it compactly drawn together?

A. That I can only answer in this way: that they were bound together,—being such fine stuff, fine material which he was getting—I don't think it was bound together nearly as tight as what it would stand; to the best of my memory they had no chokers on the ground.

Q. You didn't see any?

A. I don't remember seeing any chokers.

Q. Did you go over the whole camp?

725 A. It was a very small space, perhaps a few hundred feet square, and very easy to see all that was going on.

Q. Capt. Carter was with you on that occasion?
A. Yes, sir.
Q. What did he say in regard to these fascines?
A. He said they were not of the character which he required—the character of brush.
Q. Well, what action did he take?
A. He either himself, or instructed the foreman in my presence, then and there the process or the kind of fascine that he required, and helped to partially make one, if not entirely. I think he partially made one right on the ground.
Q. You don't remember whether it was finished before you left the ground or not?
A. I don't think the implements were on the ground at that time to finish it.
Q. To finish the fascine as he required it constructed?
A. No, sir; not in its entirety.
Q. Had that reached the stage of tying before you left?
A. I don't remember.
Q. The model then, or partial model, which you saw constructed under his direction, remained your future guide?
A. Yes, sir, as to the character of the brush, and from this he explained the choking what was required, and the spacing of the binders. That would not be required to be shown me by verbal instructions; I could gain a sufficient knowledge of carrying it out from the specifications.
Q. Upon the fascines subsequently made, subject to your inspection,—how were they tied?
A. To the best of my memory, by wire, throughout the contract.
Q. From that time until the time the contract was
726 completed, the fascines were tied or fastened by wire?
A. Fastened by wire.
Q. While on duty there did you become familiar with other improvements that had been made on the Savannah River in the vicinity?
A. A portion of my work was the addition of material to certain portions to the work which had been formerly executed.
Q. The specifications have reference to old material found at those points; that it could be used again if there was a sufficient quantity?
A. That portion you refer to was a very small part of the contract. It was simply the removal of one or two portions of some spur dams which had been detached from the shore

by former freshets. These I undertook to remove, but found it better to leave them alone, so I dare say very few yards of material was removed from the old dams.

Q. You found no material, then, which could be made into new fascines?

A. No, sir; no material.

Q. How were the fascines, which Capt. Carter required, to be trimmed and choked?

A. I was ordered to trim, or have the brush trimmed, before its being placed into the fascines, in such cases where that was necessary.

Q. How much did you cause them to be trimmed?

A. The brush in that locality was such that a great deal of it needed no trimming; some did.

Q. You mean there was but little foliage on it?

A. But very little foliage; some if it was as straight as an arrow, and with but very little foliage on it. This small brush, or small trees could be cut down and just bound together as a bundle of rods. In other cases there was considerable to be trimmed.

Q. Does the wood of that section grow straighter and 727 with less foliage than the wood in this lower country?

A. Yes, sir.

Q. Very much?

A. Yes, sir; there are patches of it that grow much straighter than what I have seen in close proximity to any of the work around here.

Q. How far from Augusta was that locality?

A. Patches of the brush that I have spoken of can be found anywhere from four,—well, from two miles to six or eight or nine from the work: the bulk of it I should consider was brought to the work from a distance of perhaps five or six miles to the best of my memory.

Q. Now, what were the instructions as to choking?

A. My instructions were explicit on that point.

Q. You say your instructions upon that point were explicit: Were not all the instructions you received from the accused explicit?

A. In this regard,—perhaps in that point,—they were more explicit than in some of the other details of the work.

Q. As to choking they were markedly explicit?

A. Yes, sir.

Q. In what way?

A. I should like to refer to the written instructions, to

that paragraph referring to my orders. I believe it says absolutely tight. (Reading:) The brush must be free from limbs and choked absolutely tight.

Q. Was that ever especially called to your attention by the accused?

A. It was.

Q. Upon what occasions?

A. On his visits to the works and on my receiving first instructions.

Q. (Handing witness photograph) Can you tell me what that photograph is?

A. I should judge that was a portion of one of the 728 shore protections that had been constructed previous to my going to Augusta, on previous work. The locality and all would indicate that.

Q. There are landmarks that enable you to recognize it?

A. Being so very familiar with the location, I think there is sufficient contour there to enable me to say that I think that was a portion of one of the old Jetties; I have walked over that.

Q. You had walked over that when you were on duty up there?

A. Yes, sir.

Q. In what condition did you find it?

A. This was on the high bank, on high ground, perhaps twelve or fifteen feet above the average stage of the water, and the remains were as shown by the photograph at the time I saw it.

Q. And if this was taken at a subsequent date, it still fairly represents what you saw?

A. I think it does to the best of my memory.

Q. How much brush did you find left there under the stone?

A. Some brush.

Q. How much?

A. In proportion to what was placed in it?

Q. That I don't suppose you know?

A. I was going to say. There was brush left there, not a great deal, but the brush was perhaps an inch or an inch and a half in diameter, and the remains of the finer stuff either had decayed, or was not be seen.

Q. Was there brush enough to keep the stone above the surface of the earth?

A. I think that much of the stone rested on the earth; in

fact, much of the material had silted in so as to make the body of the work stone and earth.

729 Judge-Advocate: I offer this photograph in evidence, and it will be attached to, or accompany, the record, marked Exhibit No. 56.

Q. (Handing witness another photograph) If you recognize that, what is it?

A. I recognize that as one of the spur dams which had been constructed previous to my work at Augusta.

Q. That is a fair representation of what it was at the time you saw it?

A. As near as a photograph will show it, I think it is.

Q. In what condition did you find that?

A. The stone was very much displaced; there was some brush,—the larger sticks beneath the stones, and as you went into the bank on the high ground, much more would be left than at the outer end, which had been badly damaged by freshets.

Judge-Advocate: I offer this photograph in evidence, and it will accompany the record, marked Exhibit No. 57.

Q. (Handing the witness another photograph) What is that?

A. That is a similar spur, which I found about as represented here, on the work.

Q. How, as to quantity of brush or mattresses, you found beneath the stone?

A. About the same in all cases; the same in this as in the other. Some of the branches are shown here. I don't know the date of this photograph being taken. There might have been more brush at the time I saw it than at the time the photograph was taken. I don't know the length of time that has elapsed, but the general appearance of the brush was mainly—

Q. I show you that, not to show the condition of the work, but mainly for you to recognize the work, and want to know in what condition you found it at the time you were there

730 Is that an unfair representation of what you saw?

A. I don't consider it such.

Judge-Advocate: I offer this photograph in evidence, and it will be attached to the record, marked Exhibit No. 58.

Q. I hand you another photograph: What is that?

A. That is a spur, or shore protection. It is so near the bank that I would hardly know which to designate it. That I constructed under orders from Capt. Carter, in 1893 or 1894.

Q. That was constructed under your supervision, then?
A. Yes, sir.
Q. By Mr. Twiggs?
A. By Mr. Twiggs.
Q. Under that contract?
A. Yes, sir.
Q. Do you see any stakes driven there?
A. I do, sir.

Judge-Advocate: I offer this photograph in evidence, and it will accompany the record, marked Exhibit No. 59.

Q. I hand you another photograph: What is that?
A. That is a similar spur which was constructed by Mr. Twiggs, under my supervision.
Q. Do you see the stakes there?
A. In this case, I do not see the appearance of stakes. I see perhaps what might be one.
Q. (Handing witness magnifying glass) Will you take the glass and look at it?
A. I am quite sure that the spur was constructed in this way: The mattresses were made and sunk at a higher stage of water than is represented there; in that case it was sewed together by poles, and did not require stakes.
731 Q. Did not require stakes. You see no stakes there with the glass?
A. I see what might be one stake at the corner, that might be driven for the purpose of holding the mattress down as it was being placed.
Q. This is a good photograph of your completed work?
A. Yes, sir.

Judge-Advocate: I offer this photograph in evidence, and it will accompany the record, marked Exhibit No. 60.

Q. I hand you another photograph: What is that?
A. This is another spur, which was constructed by Mr. Twiggs, under my supervision.
Q. That is completed work?
A. Completed work. Perhaps I should mention, that having constructed so many of those spurs, I cannot identify some of them as being entirely new. Much of the work done by me in 1893 and 1894 was the repairing of old spurs, and I cannot say whether that spur there is one of the old ones repaired by placing new material on top of it, or whether it was built entirely new.
Q. I want you to testify whether that is a good sample of the completed work as accepted and finally paid for?

A. Yes, sir.

Judge-Advocate: I offer this photograph in evidence, and it will accompany the record, marked Exhibit No. 61.

Q. Can you identify that photograph which I hand you?

A. Yes, sir; a similar spur constructed by Mr. Twiggs, under my supervision.

Q. That is work accepted by your finally as completed?

A. Yes, sir.

Q. And a good photograph of it?

A. Yes, sir. I would call your attention to the fact that some of the stone, from the time the work was done until
732 the time this photograph was taken, has been brushed about some.

Q. Is it a fair representation?

A. In general, a fair representation. If the photograph had been taken at the time the work was completed, the stone, in some instances would show more regular.

Judge-Advocate: I offer this photograph in evidence, and it will accompany the record, marked Exhibit No. 62.

Q. I hand you another photograph: What is that?

A. That is a portion of shore protections constructed by Mr. Twiggs, under my supervision.

Q. Completed work?

A. Completed work, yes, sir.

Q. How about the stakes used there?

A. The stakes show.

Q. How many?

A. I can see a large number, perhaps six or a dozen, or perhaps more by taking the glass.

Q. From your knowledge of the locality, about how closely are the stakes driven?

A. The stakes were driven—Here again I am not certain, but in the twelve-foot fascines, two stakes were required for each fascine. In the twenty-foot fascines, I think four stakes were required for each fascine. That would have to be verified by a visit to the ground, and seeing the stakes; I don't remember.

Q. Your instructions were that each fascine must be staked to the bank by four stakes three inches in diameter at the small end, etc.; you complied with those instructions as to the number of stakes required

A. I think that must have been modified to some extent in

that in the short fascines two were required, and in the longer fascines four were required.

733 Judge-Advocate: I offer this photograph in evidence, and it will be attached to the record, marked Exhibit No. 63.

Q. I call your attention again to Exhibit No. 56, the first photograph shown you: What do you find there on the surface?

A. The photograph shows a deposit of bricks, or portions of brick, on that portion of the shore protection.

Q. Whole bricks?

A. The indications are that some of them are whole, but more broken; most of them broken bricks.

Q. You remember having seen that?

A. I do remember of seeing that in one or two instances there.

Q. And you saw one of the old improvements, or place where improvements had been made, where the ballast used was of that character?

A. Yes, sir.

Q. Was there any delay in fulfilling the terms of this contract?

A. Yes, sir.

Q. What caused it?

A. The cause of the delay to some extent was due to very high water—freshets in the river. In other respects, I considered that the delay in the work was due to an insufficient force of employees on the part of the contractor.

Q. How early in the attempted execution of the contract was there a delay caused by freshets?

A. I should have to refer to my journals, or to data in the office for that; I don't remember. Some time previous to the time limit of the contract.

Q. Would you like to refresh your memory upon that point?

A. As to how nearly the completion—

Q. No; how early in the attempted execution of the contract was delay caused by freshets?

734 A. To the best of memory, when it was about half completed, or should have been about half completed, somewhere in September or October.

Q. How long after the beginning of work on the contract?

A. I am uncertain as to that: I could not make a reply.

Q. Have you any means of ascertaining that fact?

A. Yes, sir.
Q. What are they?
A. I have a journal which I could refer to.
Q. Have you it with you?
A. I have not.
Q. Where is it?
A. It is in the office of the Engineer.
Q. Here in Savannah?
A. In Savannah; yes, sir; on file with my other note-books of that work.
Q. Your turned it into the office with other papers and books?
A. Yes, sir.
Q. Will you designate it so I can send for it?
A. I can give a message where it can be found, I am sure. (At this point, the Court took a recess of ten minutes, for the witness to send after the books referred to.)
Q. You are now ready to answer; what is your answer?
A. I will refer to the daily journal kept by me on the work, and from time to time give the delays caused by excessive high water.
Q. Take the first thirty days of the work upon the improvement?
A. My first entry is on August 15th: River rises to 12 1/2 feet, so work is somewhat delayed. August 16th, river still high; no work was done sinking mats.
Q. What date was that last?
A. 15th and 16 of August.
Q. What date did the work under the contract begin?
735 A. I went there August 2nd or August 3rd, and the contractor had made some fascines. Active work did not start until about the 8th or 9th of August; that is, the putting of material into place.
Q. But he had done simply preparatory work?
A. Yes, sir; previous.
Q. Now, without stating each entry in your book, will you ascertain from it how many days in the first thirty days after work under the contract was commenced,—not preparatory work, but actual work under the contract,—how many days was the contractor prevented from working by high water, or other causes, outside of his own neglect?
A. You ask, as I understand it, in the first thirty days?
Q. Yes; take the first thirty days and aggregate the delays.

A. I should consider a fair estimate of about six or seven working days.

Q. Not a fair estimate, but I want the actual statement?

A. It was this way: When the river was only at a depth of perhaps eight or ten feet certain work could be done on shore protection, whereas, the sinking of mats could not be carried on at that depth. I considered the river high when it reached, perhaps, a height of fifteen or twenty feet necessitating, for the time being, not putting any material into place. I have the account—a report on the delay caused by the excessive high water.

Q. That shows the number of days' delay caused by high water during the first thirty days when work was being done under the contract?

A. My report would include, not the first thirty days, but up to the time the contract expired, which I don't remember.

Q. Your report covered the entire work from its first stages to its completion?

A. No, sir; to the time it should have been completed
736 by the terms of the contract; some time in—I don't remember the date—October or November possibly.

Q. You made a report, then, on the date when the contract should have been completed?

A. Yes, sir; about that time. I was asked by Capt. Carter to make a report, giving the number of days the contractor could not work due to excessive, high water.

Q. Do you remember the date when the contract expired?

A. No, sir; I do not.

Q. Had that date expired when Capt. Carter instructed you to make a report upon it?

A. That would have to be looked up in the correspondence; I don't remember. I believe it was before the completion of the contract, because he asked for an extension of time for those days, which, to the best of my memory, was fourteen days.

Q. Then, up to that date, there had been fourteen days' delay?

A. Yes, sir.

Q. Your reports showed that?

A. Yes, sir.

Q. And you don't know how much of that delay was in the first thirty days?

A. I will check myself on the six or seven days I gave you before.

Q. Yes, give us the whole of it: What is your answer?

A. I considered August 10th the first day that work commenced; that is, material was put into place. From August 10th to September 10th, I find eight days upon which the water was—upon which there was very little work done, due to excessive high water.

Q. What progress had been made up to the time the work was stopped by the high water?

A. Very small. Very poor progress; only one-third
737 of the work, or less, had been done that should have been done at the expiration of the contract.

Q. Yes, but taking out that time, necessarily you would have to deduct in determining what proportion of the work had been done?

A. Yes, sir.

Q. Now, deducting that time, how had the work progressed?

A. I should have to refer to my progress book, which I have among these (books previously referred to) which will show just the amount of work done at that date, and the total amount of work to be done.

Q. Do you know how many fascines had been put in place during that thirty days?

A. I can tell you in a moment; I have it in one of these books.

Q. I wish you would?

A. 674.67 cubic yards of fascines from Augusta 10th to September 9th inclusive.

Q. Well, how many working days had that made?

A. The number of working days, excuse me for asking, that material was placed in the work?

Q. The number of working days not interfered with by high water?

A. I am not sure of Sundays,—twenty-one or twenty-two days—eighteen working days. I was not positive of one Sunday coming in.

Q. How much rock had he put in place?

A. 408.33 cubic yards.

Q. Now, as compared with the entire number of cubic yards of mattress, and the amount of stone that would have been completed in the sixty-one days, how would that be as fair progress of work?

A. I will ask to see the total amount which was supposed to have been put in that is given in the specifications.

Q. 7500 cubic yards of fascines, more or less, and 4000 cubic yards of rip-rap stone, more or less.

738 A. Considering sixty-one days as the time in which all the work, 7500 cubic yards of fascines and 4000 cubic yards of stone, should have gone into the work, in this eighteen days, to have completed the contract on time, he should have put into the work about 2200 cubic yards of fascines and about 1180 cubic yards of stone as against 674 and a fraction yards of fascines and 804 cubic yards of stone.

Q. Now, how large a force had he engaged on the fascine work?

A. Entry in my journal August 10th, 14 men in woods; entry August 12th, brush camp, 14 men. Of course this is not exact; it is as near as I could ascertain.

Q. It is your official estimate, however?

A. Yes, sir. August 17th, 24 men in woods; September 8th, I have an entry of only two men in the woods.

Q. You know what kind of day September 8th was, do you?

A. Fair weather and water favorable.

Q. On September 2nd?

A. September 8th.

Q. The date that there were two men in the woods?

A. Two men in the woods, yes, sir.

Q. Now, how many were employed where the work was going on?

A. September 6th, 10 men making mats, no mats sunk; August 17th, 12 men on the ways,—that is the same thing, constructing mattresses; August 12th, I have a memorandum force of men about as follows: Brush camp, 14; dams, 10, that is, on the work 10; quarry, 10.

Q. That will make 34 men employed, then, on that date?

A. Yes, sir.

Q. An unusually small number, aside from that two in the brush camp?

A. Some more; 1 steamer, 1 fireman, 1 engineer, three deck hands, 1 steamer drill at quarry, 3 barges, and 1

739 anchor; that would be embodied in my report for the ten days. I cannot give it from day to day; I will have to skip the dates.

Q. I wish to get a general idea; was there sufficient force to do the work that was to be done, working with reasonable speed?

A. No, sir; I don't consider that there was.

Q. There might have been a larger number employed?
A. Yes, sir.
Q. From the very beginning of the work?
A. Yes, sir.
Q. How many could have been employed to advantage?
A. I think twice that number could have been employed; they could have worked to advantage twice that number, or more. I could not say as to the distribution of the men in each place, but would give an estimate of about twice the number.
Q. That was with a view of completing the contract within the sixty days?
A. Yes, sir; with a view of completing the contract on time. This sixty days is just given to me for information now. I was not cognizant of the number of days.
Q. Did you make that calculation of sixty working days? It was from August 5th to October 5th that the contractor was given to do the work?
A. I think I called it sixty-one days.
Q. Now, it would have taken a pretty large force to have taken that contract up and completed it in sixty days, would it not?
A. Yes, sir; it certainly would.
Q. After the expiration of the date specified in the contract for its completion, what action was taken?
A. An extension was granted of, first, fourteen days;
740 and I remember also a second extension being granted of sixteen days. At the expiration of that time, a supplementary contract was made.
Q. This supplementary contract is in evidence already. (Handing witness paper:) That is the contract?
A. Yes, sir.
Q. This supplementary contract amends and modifies the original contract in certain particulars. Did Capt. Carter have an interview with you in relation to this supplemental contract and its requirements?
A. Yes, sir; after the contract was made. I had no interview with him concerning the articles of the supplemental contract, but after the contract was drawn up, I was told of it, and given orders to proceed in the matter.
Q. You were instructed as to the stipulations?
A. Yes, sir.
Q. What instructions did you then get from Capt. Carter?
A. I received instructions to allow the contractor to con-

tinue with his work as formerly; that the Government would get together such a plant as was necessary, and proceed to do a portion of the work, of the remaining work in connection with that done by the contractor; he was allowed to continue, and we did work by day labor; employed a plant to carry out that work.

Q. And any amount expended by you on behalf of the Government was to be deducted from the final payments made him under the contract?

A. Yes, sir; at cost.

Q. What work did you do; what operations did you direct?

A. On receipt of orders from Capt. Carter, I got such information as I could, as regards the purchase of stone, the getting together of a plant, the employment of hands, and then saw him and an agreement was made with the pac-
741 ties to furnish stone, and to go on with the work,—to employ day labor and to proceed immediately with work.

Q. It was only in relation to the stone work that you employed labor?

A. Entirely; the Government did that portion of the work independently of the contractor, with the exception that the contractor offered aid in such means as he could in the way of towing material from the camps and from the quarry to the works.

Q. Thereby saving an expenditure on the part of the Government?

A. Yes, sir.

Q. Did he do all that towing?

A. All the towing that was done at the Savannah River, near Augusta. The water is so low at times that we can pole barges back and forth without any other steam-power, or any other motive power, and in several instances I had his pole-men to pole lighters back and forth from the quarries to the work and from the brush camp to the work; otherwise I did not have any other vessel, tug, or means of getting the material to the work.

Q. Do you remember how much stone you put in place by day labor?

A. I can refer to the amount.

Q. Please do so.

A. (After referring to the records) I find that the first rock placed by the Government was on December 16th.

Q. Now, what was the total amount of rock placed from

December 16th to the time of the completion of the contract?

A. 1,590 cubic yards; 1,606 cubic yards, but there were a few,—17 yards,—deducted, which were not paid for by the Government.

Q. The Government paid for 1590 cubic yards of stone?

A. Yes, sir.

Q. At what price?

A. At $1.50 per yard.

742 Q. At the quarry?

A. Delivered on barges at the quarry.

Q. By whom were those barges furnished?

A. The barge was furnished by the Government, built by Capt. Carter's order.

Q. Built by Capt. Carter's order for that particular purpose?

A. Yes, sir; for the purpose of conveying the stone and brush, and also fascines.

Q. Do you know the cost of that boat?

A. Yes, sir.

Q. How much was that?

A. Close to $400.00; I can tell within one dollar or so. To the best of my memory, $425.00 perhaps.

Q. Do you know how much of the cost of constructing that boat was charged to Mr. Twiggs, if any?

A. That I don't know. I think this barge was turned over to Mr. Twiggs at the completion of the contract; in fact, I am sure it was.

Q. So that it became his property?

A. Became his property.

Q. Now, from whom did you procure that stone?

A. I procured that stone from Mr. Reese of Augusta.

Q. Does he own the quarry?

A. No; the quarry was owned by another gentleman; he leased it.

Q. He was in possession of the quarry?

A. He was in possession of the quarry.

Q. How far from the work was that quarry?

A. A short distance; I can't remember; a mile or two; within a radius of one to three miles; not more than three, and not less than one mile.

743 Q. Was there any other quarry near that point?

A. Yes, sir; a quarry owned by Mr. Twiggs.

Q. How near to the quarry leased by Mr. Reese?

A. In close proximity; perhaps a quarter of a mile, or a little more.

Q. A quarter of a mile farther away, or a quarter of a mile nearer to the work?

A. I don't remember which was the closest to the works, the one owned by Mr. Twiggs or the one leased by Mr. Reese?

Q. Were the facilities equal for taking rock from the quarry owned by Mr. Twiggs as from that leased by Mr. Reese?

A. The same facilities.

Q. Why was not the rock taken from the quarry of Mr. Twiggs, the contractor?

A. By Capt. Carter's directions; his orders to us were to continue the work independently,—that is, to get material independent of Mr. Twiggs.

Q. He instructed you not to buy stone of Mr. Twiggs?

A. Yes, sir.

Q. Was there any other quarry except those two within a reasonable distance of where the work was going on?

A. No, sir; not to my knowledge.

Q. How far away would you have had to go for stone had there been competition?

A. I endeavored to get stone from Stone Mountain, from a company called I think the Blue Diamond Granite Company. There was at the hotel one of the managers of that Company at the time this stone was desired, and I had a conversation with him, hoping to get the stone.

Q. That stone would answer the requirements of the contract? It was of the same character as the quarries owned by Mr. Twiggs and Mr. Reese?

744 A. Yes, sir. I had not seen the stone, but being a granitic stone, I was satisfied it would be.

Q. That was the nearest stone from the work aside from the two quarries mentioned, within your knowledge?

A. To my knowledge. There might have been stone at a long distance, at Columbia, say, but the only opportunity I had of getting stone anywhere near the works was from these two quarries; I could get it far away. I made that a point to look up. I went to the various freight offices to see what rates could be made for the conveyance of the stone from distant quarries to the works, but I could not get satisfactory terms on account of the small amount, they said.

Q. You made an effort, however, to secure stone at as low a cost as possible?

A. Yes, sir.

Q. Where is Stone Mountain, where this blue granite is to be found?

A. It is, if I remember aright, 150 miles perhaps above Augusta. I think in the Northern part of Georgia.

Q. What were Capt. Carter's instructions to you in relation to the stone? State it as fully as you can.

A. As to the quality, or as to getting the stone?

Q. As to the party from whom it could be procured or not procured?

A. After going to the various freight offices, and after getting such data as I could, I had a personal interivew with Capt. Carter, and he gave orders to me then to make this arrangement with Mr. Reese.

Q. He directed you to make the agreement with Mr. Reese: What did he say about Mr. Twiggs, the contractor?

A. He said he did not wish to enter into any agreement with Mr. Twiggs with regard to furnishing the stone.

745 *Cross-Examination by Mr. Blair.*

Q. When you went out into the brush camp with Capt. Carter at Augusta, you say he instructed you how to make a fascine: Did he tell you the purpose for which the fascine was to be used, or enter into any explanation of why the fascine was constructed as he told you?

A. He did enter into a conversation in regard to the fascines.

Q. And what was that, in brief?

A. He told me that the work,—the up river work required a different class of fascines than the work on the harbor,—at the mouth of the river; that is, in the salt water and on the bars; that there he required a fascine which contained more wood and less fine material.

Q. You mean at Augusta?

A. At Augusta, yes, sir; more wood and less fine material.

Q. And the more wood and less fine material at Augusta was because the fascines there were mainly designed as shore protections, is that right?

A. As shore protection and also spur dams; especially for shore protection.

Q. And not primarily designed as silt gatherers, that is right?

A. Yes, sir; that is right.

Q. The fascines which you saw at Fernandina before you went to Augusta,—were you told that they were designed to be silt or sand gatherers, or did you know that?

A. I knew that, but I was also told that the purpose of these fascines which I had constructed under a previous contract at Fernandina were for the purpose of gathering the silt.

Q. You saw the fascines made in this engineering district after you left Augusta, didn't you?

A. Yes, sir.

Q. Down here in Savannah harbor?

746 A. I was not connected with the works in Savannah harbor at all after leaving Augusta.

Q. You saw at Jekyl Creek in 1894—?

A. Yes, sir; in 1895.

Q. Then did you see them at Cumberland Sound?

A. Yes, sir.

Q. After the Augusta work?

A. Yes, sir.

Q. The fascines constructed in 1895 at Jekyl Creek, which you saw, and those which you saw afterwards at Cumberland Sound, were designed as silt gatherers, were they not?

A. It was explained to me that they were for that purpose.

Q. And were made with more brush and fine stuff than the fascines at Augusta?

A. Yes, sir.

Q. You received another order about the fascines at Augusta, did you not?

A. Yes, sir.

Q. After the first order of date of August 2nd, 1893?

A. Yes, sir.

Q. If you will kindly look at page 281 of letter press book S. R. 1893, which I now hand you; I will ask you if you received that letter of instructions from Capt. Carter?

A. I did, sir.

Mr. Blair: I will read the first paragraph of this letter?

"Memo. for Mr. E. R. Conant, Inspector.

U. S. Engineer Office,

"Savannah, Ga., October 25th, 1893.

"For those mattresses resting directly on the bottom, fas-
"cines of slightly lower grade than those now used, and
747 "containing a small amount of brush, may be employed.
"For all courses above the bottom ones, the same char-

"acter of fascines now used will be employed." The rest of the letter does not relate to fascines.

Q. You spoke of the fascines at Augusta being fastened with wire binders and not with tarred rope?

A. Yes, sir.

Q. Do you know the reason of that?

A. That was explained to me at the time. I have a recollection of having a conversation with Capt. Carter in regard to the wire and in regard to the rope. I think it was this: That in the fresh water the wire would last very much longer than this tarred rope, and that was the reason he desired or ordered wire to be used up there instead of the rope.

Q. And in the salt water work which you did or saw, the fascines were, as a rule, bound with tarred rope, were they not?

A. As a rule on the work I have been on, it was.

Q. On the salt water work?

A. On the salt water work.

Q. As a matter of fact, the tarred rope or lath yarn in salt water lasts better than wire, does it not?

A. In the work that I was on sanding up took place so quickly over the mattresses, that it was immaterial whether it was wire or tarred rope; that is, after it was one in place and imbedded in the sand.

Q. It made no difference whatever whether it had binders at all after it became sanded up?

A. I think in most of the improvements that I was on this was the case.

Q. After the mattress sanded up, it made no difference whether it was wire or rope—made no difference whether it was bound at all, or not?

748 A. I am sure wire would last but a short time in salt water. As to its lasting longer than tarred rope, I don't know.

Q. You don't know of your own knowledge?

A. No.

Q. You are familiar with the character of the brush in the vicinity of Fernandina and Savannah harber, in a general way?

A. Especially in Fernandina.

Q. And you said in your direct examination that the character of the brush at Augusta, that the brush at Augusta is straighter, and freer from small branches than the brush at Fernandina?

A. Such can be obtained at Augusta.
Q. Easily obtained?
A. Comparatively so.
Q. Now, you could not, as a matter of fact, could you, get brush in the vicinity of Fernandina to make a straight fascine such as you used for shore protection on the river at Augusta?
A. Not without a great deal of cutting or trimming.
Q. Well, as a matter of fact, could you get in the vicinity of Fernandina perfectly straight brush which is comparatively easily obtainable at or near Augusta?
A. Well, it does not grow there. The same class of brush does not grow at Fernandina. I have never seen it as straight and with as little fine twigs as up the country,—up the valley of the Savannah river.
Q. Are you sufficiently familiar with the practical interpretation of the specification of works of this kind to say whether or not it is proper for the Engineer in charge to vary his specifications, or to vary his actual construction under the same set of specifications, so as to adapt the material to the end to be attained by the project? Do you understand
749 my question? May not an Engineer taking two contracts each containing a specification say with respect to the making of fascines, the nature of the specification being the same in both contracts, the object of the project in the two contracts being slightly different: Taking that set of facts, are you sufficiently familiar with the practical working of contractors to know whether the Engineer may vary the actual work of the fascines under the same specifications to suit the two objects?
A. I should think it would be better if the specifications had been previously arranged for different work. Slight changes, I think, could be made.
Q. To attain the different object in the two cases?
A. Yes, sir.
Q. I wish you would go around there and look at those fascines back of the table; will you please examine them?
A. I examined them when I was sitting over there.
Q. Will you try to lift one of them; just raise it slightly. I want you to get approximately its weight.
A. (The witness did so.)
Q. Now, read that tag there, right in front of you.
A. (Reading) "This fascine taken from Foot Camp, S. C., on November 10th, 1897, by S. M. Hale, Inspector."

Q. "This fascine." It is not a "bundle of brush" on there, is it?

A. No, sir.

Q. Do you know who S. M. Hale is?

A. Yes, sir.

Q. Is he employed in this engineering district?

A. Yes, sir.

Q. Was he employed by Capt. Carter in recent years?

A. Yes, sir.

750 Q. How does that fascine which you attempted to lift just now compare in weight with fascines down at Cumberland Sound when you first went there?

A. The fascines that were made in the work at Cumberland Sound when I was there were generally put into the work shortly after being constructed or made. Therefore, the material would be green, and would weigh much more than this fascine, which has been exposed to the air for the length of time which I should think it had been by its appearance; it would weigh more.

Q. And you could readily lift, if that fascine or bundle of brush would hold together, you could readily lift the whole thing with one hand easily?

A. I think I could lift it—I would not say with one hand.

Q. You practically did lift it with one hand just now?

A. I didn't try to lift the whole thing: I lifted up one end of it.

Q. How many men did it require as a usual thing, at Cumberland Sound, to lift a fascine such as was made down there?

A. In going over the works, I have seen them unloaded and loaded on the wagon. It is my impression that there were two men; that is, it took two men to load each fascine.

Q. Sometimes three, were there not?

A. That I cannot say, whether three men were lifting one fascine; there would be three men around the wagon,—sometimes three, or four, or five; I have certainly seen two, and undoubtedly seen three, but I think two would be right.

Q. Have you ever seen such fascine as that at Cumberland Sound, as the one you have just lifted?

A. I dare say I have seen some of the same character as that.

Q. Going into the work?

A. You asked me if I had seen any.

751 Q. Yes.

A. I think I have.

Q. Many, or a few?
A. You ask for the general average, do you?
Q. No. Answer me; many or few of as inferior?
A. I don't know what you would call many; what percentage?
Q. Twenty-five per cent. of them?
A. No, sir; I don't think that there was twenty-five per cent. of fascines used on that contract of the weight and of the bulk of that fascine I put my hands on.
Q. Which that would be if it were green?
A. Yes, sir.
Q. In other words, then, the bulk of the fascines at Fernandina, so far as your observation went, were better than that?
A. The average fascine that was used on that contract I do consider better than that fascine I have just handled.
Q. How at Jekyl Creek, in 1895?
A. The same class of fascine went into Jekyl Creek.
Q. You spoke a while ago of Mr. Twiggs having had permission to use some of the old material in his contract?
A. Yes, sir.
Q. That old material had been in for a couple of years, had it not?
A. It had been in for some time; I don't know just how long. I don't remember when the previous contract was carried out.
Q. Of course, the fascines were not fit to be used?
A. No, sir.
Q. Could not, in any event, have been properly used?
A. No, sir.
Q. You, as a matter of fact, never saw a fascine that looked like that go into any work, did you,—that exhibited over 752 there (brush in the court-room)—I mean dry like that?
A. Very seldom, if ever. The fascines were usually used as I have stated.
Q. They were green, live brush?
A. Green; put into the work immediately after construction on all the works that I was ever on.
Q. In this Exhibit No. 56 (photograph) concerning which you testified that you saw a lot of brick-bats on the shore protection; you don't know who built that shore protection, do you —I mean of your own knowledge?
A. Only that it was built a year or two years previously, by another contractor.

Q. Do you know whether it was built a year or two years previously, or built in 1878?

A. I don't know, sir.

Q. You don't know whether it was built in 1884, do you?

A. No, sir; that is, I don't know whether there was a contract in 1884. I know there were several contracts preceding the one upon which I was employed at Augusta, but the dates of which I don't know.

Q. Do you know, as a matter of fact, that there was a contract for improving the river at Augusta as far back, or further, than 1878, or thereabouts?

A. As to the year, I cannot say as to that. I had heard that there were previous contracts. When they were carried out, I do not know.

Q. Then you say you don't know whether, as a matter of fact, this shore protection shown by Exhibit No. 56 was built in 1878, or any other time since 1878, and prior to 1892?

A. I simply know it was built prior to 1892; I don't know the year.

Q. Then whether the contractor put the brick-bats on 753 that you have absolutely no knowledge?

A. No, sir.

Q. They might, for what you know, have been thrown there as refuse by somebody who wanted to dump his bricks—that is true, isn't it?

A. Yes, sir, as far as I know.

Q. I see on the back of each of these photographs is a legend that they purport to have been taken by John D. Twiggs, Jr.; do you know John D. Twiggs?

A. I know a Mr. John Twiggs; I don't know his initials.

Q. Is he a brother of Mr. A. J.?

A. I think he is a son of Mr. A. J.

Q. As an engineering proposition, what sort of a condition does this Exhibit No. 56 show the shore protection to be in; good, isn't it?

A. Yes, sir, I consider it such.

Q. As an engineering proposition, the jetty shown in Exhibit No. 57 is in excellent condition, isn't it? It is sanded up on both sides. Isn't it in excellent condition?

A. I would hardly say that I would consider that in excellent condition for the purpose for which it was built. It would be in excellent condition, provided further storms—future high waters were not expected. In that case, it might be broken away. Probably it was more regular preceding some other freshet than it is now.

Q. Do you remember that there was a great freshet in 1892?
A. I remember hearing that there was.
Q. The water rose 30 feet?
A. Thirty odd feet.
Q. And flooded the streets of Augusta?
A. Yes, sir.
Q. And yet that stood through that freshet?
A. For aught I know that was built previous to that freshet.
754 Q. You didn't build it?
A. No, sir.
Q. Mr. Twiggs didn't buold it?
A. No, sir.
Q. It was there when you and Mr. Twiggs went up there?
A. Yes, sir. What was the date of the freshet, did you say?
Q. I mean the great freshet just prior to the Twiggs contract in 1892?
A. I am not sure whether in 1892 or 1891.
Q. 1893?
A. I don't remember the date.
Q. Now, Exhibit No. 59 which you saw was a shore protection built under the Twiggs contract, and shows the brush fascines very little if any silted up, or covered with mud or sand, does it not?
A. Yes, sir.
Q Quite exposed, isn't it?
A. Yes, sir, exposed.
Q. If that is not covered with sand in a short time, the fascines will rot away, won't they?
A. Yes, sir.
Q. Rot away more quickly because alternately wet and dry; isn't that true?
A. Yes, sir.
Q. The same condition with respect to the fascines being exposed is shown by Exhibits Nos. 60 and 61, is it not?
A. You mean as to being exposed?
Q. Yes.
A. Yes, sir.
Q. The No. 62 (handing witness photograph)?
A. Yes, sir.

Q. Which one of these Exhibits; which one of the
755 structures represented by Exhibits 59, 60, 61 and 62 were built by you when you hired labor after Mr. Twiggs got his supplemental contract, and which ones were built by Mr. Twiggs?

A. I could not tell you from the photograph. I could refer to records in the office which would show. There is a map of each, and every one numbered, and data in my books which would show.

Q. The freshet prior to your going up there,—the one to which I have just referred, tore out bodily a portion of the prior improvements, did it not?

A. Yes, sir.

Q. It changed one jetty from the Georgia side to the Carolina side, didn't it; or from the Carolina side to the Georgia side?

A. I cannot certify to that. I heard of that: but I do know there was a portion of some of the spur dams which were separated from the bank,—that were wholly independent of the bank.

Q. From your observation of the effects of that freshet you can say, can you not, that it was an extraordinary freshet?

A. It was.

Q. In Exhibit No. 63, you spoke of the heads of stakes protruding; I call your attention to these two; how close are they apparently together?

A. Apparently two feet; or one and one-half, or two feet —I mean from center to center.

Q. Two feet?

A. Hardly that. Perhaps a foot and a half, or a foot; perhaps not more than 10 or 11 inches between the center.

Q. Can you say whether these are stakes or the stumps of saplings?

A. Being so close together,—there are three of them there—it is hard to say. They look more like stumps than they do stakes to my mind. but they may be stakes. The
756 heads seem somewhat battered as though they had been driven.

Q. On page 263½ S. R. letter-book, 1893, certain instructions were given you of date of August 2nd, 1893, in which it is said that each fascine must be staked to the bank by four stakes, three inches in diameter at the small end, and six feet long for the bottom layer; you say that was modi-

fied afterwards by Capt. Carter so that in short fascines you drove two stakes, and in the long ones four; I understood you to say so?

A. To the best of my memory. I have no data or memorandum concerning that, but I do remember some modification. I know there could not have been four stakes in 12-foot fascines. As you see, the fascines are of two lengths, 12 and 20 feet. In the 20-foot fascines, it is possible and probable that four stakes were required.

Q. But you state now that in other fascines as a matter of fact only two stakes were driven?

A. Yes, sir; I am sure of that.

Q. Now, in the specifications attached to the contracts, I find, "There shall be, when stakes are used, at least two "stakes for each fascine or for each foot in length of mat-"tress. These stakes shall be at least five feet long for bot-"tom layers, and six feet long for any upper layer, and must "be driven until their heard are flush with the brush". The specifications have said that at least two stakes must be driven in each fascine; it is no violation of the specifications to drive four, or to require four, is it?

A. No, sir.

Q. In other words, the specification has in contemplation the possibility of driving more than two?

A. Yes, sir.

Q. And the possibility of their being more than five feet in length when it says "at least five feet in length"?

757 A. Yes, sir. Might I add something to what I have just said to you?

Q. Yes.

A. That is in regard to the number of fascines. That happened five years ago, and until recently I have not thought of this. Now, it is possible there may be two or may be four stakes. That can be verified by sounding and found on the ground. To the best of my memory, there might have been two for the 12-foot fascines; I may be wrong.

Q. A portion of the delay in the execution of the Twiggs contract was due, as you have testified to high water, and Twiggs got a concession fourteen days for fourteen days of high water, didn't he?

A. I understood it that way.

Q. Then he got as an additional concession sixteen days more?

A. Yes, sir.

Q. They were not entirely on account of the days lost by high water?

A. My memory does not go back to the reason for giving that 16 days.

Q. It was not high water, was it?

A. I don't remember of it being high water ,yet it may be; that will be contained in a letter from me to the office.

Q. What was the other reason that Mr. Twiggs was slow in his work? He was incompetent, wasn't he? Or, let me put in this way? He was not a very competent man, was he?

A. I could not asnwer that. I could not say he was not.

Q. You have stated elsewhere, haven't you, that you didn't consider he took hold of the work with the determination he should have?

A. Yes, sir.

Q. Or with the right motive: you stated that, too, didn't you?

A. Well, motive in what respect—in completing the contract?

Q. Well, I might ask you this: You were asked before the Engineering Board, were you not—I will ask you if
758 you did not state before the Board of Engineer officers down here, in September, "I don't consider that that contractor", meaning Twiggs, "took hold of the work with the determination that he should have, and with the right motive. I don't want to say he was dishonest, but I don't think he took hold of it as any contractor should." Did you make that answer?

A. I did, either that answer or something like that. I expect you have given it as it is there.

Q. That is correct as you then believed?

A. Yes, sir.

Q. And you know of no reason now to change your opinion in that respect do you?

A. I do not. There might be a modification made to that, but I am still of the same mind as I was then, that the contract was not taken hold of with the stimulus that it should have been.

Q. (Showing witness paper) In one instance the contract provided that he should begin August 5th, didn't it?

A. Yes, sir.

Q. It so provides, does it not?

A. Yes, sir.

Q. And he didn't really begin to put in his material until August 10th as you have testified?

A. Yes, sir, August 10th.

Q. Now there were 7500 cubic yards of fascines, more or less, called for by the specifications, were there not?

A. Yes, sir.

Q. And the contract extended from the 5th of August until the 5th of October? There were then, excluding Sundays, about 53 working days, were there not, and not sixty-one as you, by inadvertence, or I believe, the Judge-Advocate by inadvertence, stated it to you?

759 A. Yes, sir.

Q. There would be, leaving out Sundays, about 52 or 53 days?

A. Yes, sir.

Q. How much would that require of him to put in daily, to keep up with his work and finish in the time allotted,—how many cubic yards of fascines a day?

A. It can be very easily obtained.

Q. Divide 7500 by 53 and you will get it.

A. Do you ask me to do that?

Q. If you please.

A. 141, If I have made no mistake.

Q. About 140. Now, in the eighteen days you said that he put in about 674 cubic yards. I will answer for that—you did say that?

A. Yes, sir.

Q. And 18 into 674 goes 36 times, does it not?

A. Nearer 37 or 38.

Q. Call it 38; so that his actual rate of progress, instead of being 140, as it should have been, a day, was in reality only about 38?

A. Yes, sir.

Q. Now, on the stone work there were 4000 yards, weren't there? Divide that by 53 and you get 77, don't you?

A. About 76.

Q. He actually did, in the first eighteen days, 408-1/3, or at the rate of 22 per day?

A. 22 or 23.

Q. So that his actual rate of progress was to his necessary rate of progress, in order to complete his contract within the time, as about 22 is to 76,—about one-third?

A. It wasn't that, leaving out his extension of fourteen

days owing to bad weather—that is, providing there had been no freshets.

760 Q. He contracted to do it in 61 actual days?

A. That is correct.

Q. Now then, assuming that he had no bad weather, he would have had 53 working days, so that to figure it out as a contractor would, you would say he would necessarily have to progress at the rate of whatever the quotient of 53 divided into 7500 is in respect to the fascines, and whatever the quotient is of 53 divided into 4000 in respect to the rock. That is correct, is it not?

A. Yes, sir.

Q. Now, when you took hold of it you had no plant; when you took hold of it, acting under instructions from Capt. Carter, when the supplemental contract was made, you had no plant?

A. No, sir.

Q. Did you make more rapid progress than Mr. Twiggs made doing the same kind of work?

A. I think I did.

Q. You did, as a matter of fact?

A. I think I did make more rapid progress.

Q. Mr. Twiggs was out of humor at the rate of your progress, wasn't he? He didn't like it?

A. I would rather not answer in that way.

Q. Do you remember whether or not, on January 9th, 1893, you wrote to Capt. Carter referring to Twiggs in substance this: "Work proceeding very slowly", "very" underscored, "and on October 5th, the expiration of his time of contract, but one-sixth of the work had been done. As the water had been high on several days, I recommended that he should be allowed an extension of fourteen days. Still the progress of the work remained unchanged, and I urged him from time to time to increase his force, which he promised to do". Do you remember writing that in substance?

761 A. Yes, sir.

Q. That had reference to Twiggs?

A. Yes, sir.

Q. And you said in your direct examination that he might have employed twice as many men in the work with economy?

A. I do consider that.

Q. Did you say in that letter, in substance, that Mr. Twiggs, from the beginning, had employed incompetent help

and a force totally inadequate on a contract job of this kind?

A. Yes, sir.

Q. Do you remember making a complaint at one time that one of Mr. Twiggs' foremen,—making complaint to Capt. Carter, that one of Mr. Twiggs' foremen threw rock into the river instead of on the work?

A. I do remember some such report being sent to Capt. Carter by me.

Q. And what was that foreman's name, do you remember—Sibley, wasn't it?

A. I think that is correct. I would have to refer to the letter for exactness, but I think it was Sibley.

Re-direct Examination by the Judge Advocate.

Q. Do you know if Mr. Twiggs received any payment on this contract before its completion?

A. I believe not.

Q. Do you know if he was embarrassed in his operations for the want of funds?

A. I think he was; that is, I only have reason for that in that he complained to me that it was difficult to obtain money.

Q. In estimating upon the work under the specifications, as an Engineer would you not take as a standard of the probable cost to you the statement set forth in the specifica-
762 tions, and if it said not less than five feet, consider that five feet would be acceptable and would be the standard length of the stakes for instance?

A. I should adhere to that in making an estimate.

Q. You would estimate upon cost of stakes of that length?

A. I should.

Q. You were shown one of the photographs and asked if that was unusual in view of the improvements having been made two years before. Had the work been of the same character as that you supervised under the Twiggs contract, how long a period of time do you think would elapse before it would look like that (handing witness photograph)?

A. Might I see two or three prints of the mattresses?

Q. Take them all (handing witness photographs).

A. I notice in photograph 4 (Exhibit No. 59) that there is some of this stuff—grass—growing from the spur which was constructed in 1893 and 1894. Now from that time to this would give the time of—

Q. Assuming, then, that this was taken four years after the work under your supervision, what would be its probable life?

A. It would be—there would be more, I think, of grass and fine bushes growing from the silt which had settled among the mats.

Q. It would remain a solid mass of work, would it not?

A. It would remain filled more or less with this fine silt.

Q. Could it ever, constructed as it was, come to look like Exhibit No. 56?

A. Not the lower portion. That portion (indicating on photograph) could; this lower portion could not, because there would be frequent freshets that would clean off anything on that.

Q. You spoke of seeing more than one man engaged in carrying fascines at Fernandina, and sometimes two and even more, I understood you?

A. Yes, sir.

Q. That might have been necessitated by the fascines 763 being fragile instead of heavy, might it not?

A. It could be so.

Q. You say that 25 per cent. perhaps of the fascines you saw put in the work there were as poorly constructed as the one here, taking into consideration that it was fresh?

A. I didn't state 25 per cent. I believe, but I did state that I thought there was some percentage of fascines that got into the mattresses of just that order—, into the mattresses I saw sunk.

Q. How many fascines were 10 per cent, better than that (indicating bundles of brush in court-room), or were there any?

A. In my opinion there were in this way: That they were made more carefully. The brush might have been just the same brush as I see there, but there might have been more of that brush put into the fascines. I refer to the fascines in my work under the 1894 contract at Cumberland Sound; that they were more carefully constructed.

Q. Did you ever see as good a fascine put into the work at Fernandina as you caused to be put into the work at Augusta under the Twiggs contract?

A. No, sir; there was not.

Q. You never saw one at any other place?

A. No, sir.

Q. How far from Augusta is that place where you saw the brick-bats?

A. In close proximity; perhaps a few thousand feet outside of the City limits.

Q. Is there a good drive-way to it?

A. There is a road passing very near the head of these spurs, along in that section.

Q. Is there a dumping ground in the vicinity?

A. I don't recollect such.

764 Q. Were there any brick-bats dumped about that vicinity?

A. I don't recollect of seeing any.

Q. All you saw then were upon this work?

A. Yes sir.

Q. Were they well distributed over the work?

A. Apparently.

Q. Not in any pile at any one place?

A. No, sir.

Q. You say that under the terms of the contract Capt. Carter was justified in giving you these instructions to put down stakes of larger dimensions than those referred to in the specifications, and that he could have ordered you to put in more stakes; he could have ordered you to put in 20 if he so desired; there was no limit to his power; I so understood you?

A. Yes, sir.

Q. You spoke of an extraordinary freshet: Did it occur before the specifications for the Twiggs contract were dated, namely, May 19th, 1893?

A. I could not state that: I think it was. I think the freshet was in the Winter preceding, some four or five months previous to this contract being taken up at all, or the specifications being drawn up. I cannot state; I don't remember the exact date when the freshet occurred.

Q. When you took charge of the Government work under the Twiggs supplemental contract, taking complete charge, what experience had you had in carrying on the practical execution of such work?

A. With the exception of being assistant to Mr. Felber, at Cumberland Sound, and a short experience at Jekyl Creek, I had none in the way of constructing mattresses or river improvement work. I had had previous experience in other kinds of engineering work, sewer work, etc.

765 Q. You had the general education of an engineer?

A. Yes, sir.

Q. You had no experience, however, with the employment of labor and the purchase of material of a practical kind, had you?

A. Yes, sir; I had had.

Q. To what extent?

A. If I remember rightly, for about six months or so, in closing up a contract in Newton, Mass., on sewer work; I had more or less to do with the charge of the labor on the ground.

Q. Labor is somewhat higher at Newton, Mass., than it is at Augusts, isn't it?

A. Yes, sir; common labor cost anywhere from $1.25, to $1.50 to $2.00, whereas, for common labor at Augusta, I paid 75 cents.

Judge-Advocate: Now, with the consent of Counsel, I will ask a few questions that I neglected to ask on the direct. Shall I put them now?

Mr. Blair: Certainly.

Q. (the Judge-Advocate continuing examination:) You were on duty supervising what is known as the Bangs contract?

A. Yes sir.

Q. At what point?

A. Cumberland Sound, Ga.

Q. The same character of work was going on as that which you have testified to?

A. Yes sir.

Q. Mattresses being sunk, stone work, etc?

A. Identically.

Q. Was that a very large contract?

A. $170,000.00 was the amount.

Q. The amount of the contract or the amount paid?

766 A. I think $162,000.00 was the amount paid. The appropriation, I think was $170,000.00.

Q. You supervised that work?

A. Yes, sir.

Q. And it was upon your reports that payment was made?

A. Yes, sir.

Q. And it was $162,000.00?

A. Yes, sir.

Q. Did you, as an Engineer, make an estimate of what the actual cost of that improvement had been to the contractors?

A. I did for my own knowledge, and I went into a careful estimate. Such estimate I supposed I had among my papers, but I cannot find it now.

Q. You were careful in making your estimate?
A. I was.
Q. Taking into consideration all possible factors?
A. I endeavored to,—everything connected with the expense of the contractor.
Q. What was the aggregate of your estimate?
A. The aggregate of the estimate was close to $80,000.00. The details as to the price of the stone, brush, etc., I cannot give.
Q. You could to-day make up a similar estimate with the knowledge of the amount of material used, could you not, and the knowledge of the labor necessary to put it in place?
A. In the case of the estimate that I have given you, I gave the exact cost. That is, as near as I could,—the price of the stone which the contractor paid, and such other data which I could not get now.
Q. Then you knew?
A. Then I knew.
Q. Had actual knowledge of the facts?
A. Yes, sir.
767 Q. Had actual knowledge of the amount of labor that was necessary or was used in the contracts?
A. Yes, sir; and further, the weight of the cars of stone delivered on the works.
Q. You knew then all material that was put into place and the cost of it to the contractor, and the cost of the labor used in all branches of the work, and its final cost in place of all the work done under that contract?
A. As near as I could ascertain; I think I made a close estimate.
Q. And that was $80,000.00 upon a contract upon which $162,000.00 was paid the contractor?
A. I believe it was $162,000.00; that would have to be verified.
Q. Whatever the amount may have been?
A. Yes, sir.
Q. At that same time, after you completed the Bangs contract where did you go?
A. I went to Jekyl Creek again and to Brunswick, to carry out two small contracts.
Q. Who had those contracts?
A. I think they were in Mr. Bangs' name, both of them; I am not sure. The Cumberland Sound was in the name of An-

son M. Banks; I should have to have that referred to the record to see whether it was Bangs or Gaynor.

Q. It was either Bangs or Gaynor?

A. It was of the same firm. I ought not to say that, but the gentlemen who have done the work for the last year or so.

Q. What plant was used in that work at Jekyl Creek?

A. One tug.

Q. Where did it come from?

A. It was the same plant as was employed on the work at Cumberland Sound

768 Q. Do you remember the kind of stone that was used there?

A. Yes, sir.

Q. What was it?

A. Florida rock, so called.

Re-cross Examination by Mr. Blair.

Q. In answer to the Judge-Advocate, you said that it may have been that two men were required to lift the fascine at Cumberland Sound because it was fragile: do you remember making that answer?

A. Not exactly in those words. I believe Col. Barr asked me if the fascine was fragile, if it would not require two men to lift the same, and I replied in the affirmative.

Q. Which, of course, is true, isn't it?

A. Yes, sir.

Q. But, as a matter of fact, do you remember any single fascine that was so fragile that two men had to take hold of it?

A. No, sir. I don't think the fascines were of such weight as to require two, but I think if you were to take one end of any fascine it would bend almost double so that it would be very inconvenient for one man to lift it.

Q. It would be very inconvenient for one man to lift them anyhow, by one end, stiff or limber, would it not?

A. Yes, sir.

Q. You were instructed in writing, were you not, in 1893, to follow the specifications in the Cumberland Sound and Jekyl Creek work—in May, 1893?

A. I was not in charge of the work at the Cumberland Sound in 1893.

Q. Where were you in May, 1893, if you were not at Cumberland Sound?

A. I was assistant to Mr. Felber. He had charge of that in the Spring of 1893. I don't remember just the month.

769 I then went to Jekyl Creek, and it may have been May, and it may have been June or July, somewhere along there.

Q. I will ask you to look on page 75, in letter-book J. C., 1893, and say whether or not you ever got a copy of that letter?

Judge-Advocate: Who was that addressed to, Mr. Blair.

Mr. Blair: Addressed to Mr. Felber, and noted in the postscript copy for Mr. Conant.

A. (by witness) Yes, sir.

Q. You received that then, did you?

A. Undoubtedly.

Q. In this letter of instructions is contained this sentence: "These ranges having been established, you will extend the foundation course with brush mattresses of the third design," etc. That is right, isn't it?

A. Yes, sir.

Q. And at the bottom, "a copy of the specifications is enclosed herewith"; that is right, isn't it?

A. Yes, sir.

Q. Look on page 114 of the same letter-press book, and say if you received that letter of instructions?

A. Yes, sir.

Q. It is signed by Capt. Carter, isn't it?

A. Correct.

Q. And in that occurs this language: "Care will be taken in constructing the mattresses to see that they are properly built, so that the settlement after construction may be reduced to a minimum",—that is correct?

A. Yes, sir.

Judge-Advocate: Who is that addressed to, Mr. Blair?

Mr. Blair: "Memorandum for E. R. Conant, Inspector, Jekyl Creek "jetty work", dated April 30th, 1895.

770 (Mr. Blair continuing the examination): Do you remember on or about June 26th, 1895, writing with reference to Cumberland Sound a letter to Capt. Carter in which this language occurred: "The mats are well sanded up, and all the work is in good condition"?

A. I do remember making a report on the condition of the work.

Q. In substance to that effect?

A. Yes, in substance to that effect; I don't know just how it was worded.

Q. Do you remember recommending a deduction of 1,000 square yards of mats in Cumberland Sound along about April 30th, 1895?

A. I remember making deductions for some mattresses some time during the contract, but don't remember the date.

Q. You don't remember whether it was 2,000 yards?

A. No, sir.

Q. Then whenever you considered the mattresses not up to the specifications, you recommended a deduction?

A. I recommended a deduction several times for mattresses and stone.

Q. Because not up to the specifications?

A. As interpreted by Capt. Carter.

Re-direct Examination by the Judge-Advocate.

Q. Your standard of mattresses was what you had found being accepted by the Engineer in charge, was it not?

A. Yes, sir.

Q. Your inspection and consideration of the subject didn't go beyond that?

A. No, sir.

Q. In that letter there also occurs this: "In water 771 four feet deep there will be three courses of mattresses; six feet deep, four courses; eight feet deep, five courses; ten feet deep, six courses. For the three-course mattress, the width will be 45, 25 and 20 feet; for the four course mattresses, 45, 30, 25 and 20 feet; for the five-course mattress, 45, 30, 25, 20 and 20 feet; and for the six-course mattress, 45, 30, 25, 25, 20 and 20 feet. It is desired that the mattresses may be built of such thickness that the crest will be at approximately mean low water." You found that in the same communication?

A. Yes, sir.

Judge-Advocate: There also appears in that letter on page 74 the following: "These ranges having been established, you will extend the foundation course with brush mattresses of the third design, 40 feet in width, followed by a second course 30 feet in width, upon which will be placed, if necessary, a third course 20 feet in width. Each course should be

built of a double thickness of mattresses, the grillage being of good sized poles, in order to obtain vertical height.

"These mattresses may be built on ways constructed on barges, and launched in place, if the contractor so desires. By building the mattresses in two courses, you will be able to economize on stone. It is thought that from two to four inches of stone will be enough for the double bottom course; from four to six inches enough for the second course, and on top of the third course,—if that be the crest,—a depth of one foot of stone will be placed.

"The crest should be at a height of five feet above mean low water mark. If the third course fails to bring the dam to this height, (five feet above mean low water mark) a fourth course of not less than 15 feet and not more than 20 feet in width will be constructed.

"A copy of the specifications is enclosed herewith."

722 The following questions were propounded by the court.

Q. What work is that for?

Judge-Advocate: This is for the Jetty work at Jekyl Creek.

The Court: I would like to ask the witness to read the specifications for the fascines at Cumberland Sound, and to state how the average of the fascines which he saw go into the work there compare with the requirements of the specifications.

Judge-Advocate: The contract of 1894, did you say?

The Court: Which ever contract he was there on.

Witness: 1894 and 1895 at Cumberland Sound.

Q. Read aloud the specifications for the fascines, and state how those that went into the work compare with the specifications in regard to quantity of brush that was put in the fascines, and the character of the brush, and the length of the fascines, and the tightness with which they were choked and bound?

A. (Witness reading): "All fascines will be made of live brush of cedar, water oak, myrtle, sweet gum, or any other variety of wood approved by the Engineer Officer in charge. The fascines will be from thirty to one hundred feet in length, and must be compressed tightly by an approved form of choker, to a diameter of nine inches at intervals of two feet, where they must be bound firmly with wire or tarred rope of approved strength. The brush used will be as straight and well trimmed as can be obtained; the fascines shall be care-

fully and thoroughly made and handled with care. They shall be piled up on shore or on barges for measurement in such way as the Engineer Officer in charge may direct." First; "The fascines will be from thirty to one hundred feet in length." In construction, the fascines were in lengths from twenty-two or such multiple of twenty-two, so as to go, when laid connectedly, the full width of the mattress,—I don't remember whether it was 20 or 21 or 22 feet,—If the mattress was one hundred feet wide, there would be about five of those fascines to go in the width of the mat. As to the quantity of brush that was put in those fascines in 1894, as I have
773 stated before, would be more on an average than in the fascines that you see on the platform. The average fascine was better than those fascines there.

Q. But the question is, how much as compared with the quantity the specifications required to go into them?

A. Now, these specifications are interpreted in different ways by different engineers, as I have found out since I have been here, and each one has a different interpretation. It is pretty hard for me to say what percentage you might think should go in or what I might. I think myself that there should have been more material in a fascine than what is shown on the platform, to come up to the specifications. As to just how much more, it would be hard for me to estimate, but it should be more compact. There at Cumberland Sound, to accomplish the project, a fascine of about that character would collect the silt and sand more quickly, more readily. I have sunk mattresses there which, after being visited in twenty-four hours,—or hardly twenty-four in forty-eight hours, would show indications of being silted at that time. That was on a portion of the work with which I had to deal in 1894. I don't speak of the continuation of the jetties or the work done since, but of the portion of the work done in 1894, which was on the banks and a portion of it exposed almost at mean low water, so that silting took place almost immediately after the mattress was put in place. As to the diameter of the fascines, I think the average diameter in the specifications was carried out; some ran more than nine inches, and some, perhaps, would run less than nine inches.

Q. How high was that brush construction carried in the shoal places you just spoke of?

A. It was carried, I think, about one foot above mean low water in portions; perhaps some portions of it would be a little more than a foot. It was laid for the purpose of mak-

ing a foundation course to receive stone which was to be placed upon it in later work; that was Capt. Carter's conversation with me. You asked further as to the spacing of
774 the wire. In the specification was mentioned two feet. I cannot testify that, in every instance, or in the bulk of the work, the wires were spaced just two feet apart. I know that the wiring was spaced sufficiently near, so that the fascine would be the same when placed in the mattress as when constructed. It might be three feet and might be two and a half feet. I would not say that the spacing was more than three feet by any means.

Q. How much brush did one of those fascines contain compared with one of these here,—how much more or how much less,—how much more?

A. From fifteen to twenty per cent. I should think would be a fair amount. There is one thing which has not been brought out in speaking to you. The brush obtained for the 1894 contract was a much better class of brush than is shown there. There was a section of territory adjacent to the works upon which a very good quality of brush grew, fairly straight, and easily to get into the fascines, and during that contract nearly all the material came from this one location on land owned by the Fernandina Development Co., of which the brush for the contract was purchased.

The following questions propounded by the court were suggested by the Judge-Advocate.

Q. You said the wires used?

A. I correct that; it was not wire; it was lath-yarn.

Q. As to the comparative cost of making one of those fascines, so-called, and those used under the Twiggs contract?

A. The cost would be increased in making the fascines for the Twiggs contract somewhat. The weight of the material would be so much that the conveying of it from the brush camp to the works would increase it.

Q. It would take the men longer to construct one?

A. It ought not to take much longer to construct it,
775 fascine for fascine; it occupied about the same position in the mattresses, but there was extra cost on account of handling it,—the weight.

Q. Was there not more material in it than in one of these?

A. Yes, sir.

Q. More than double as much?
A. Yes, sir.
Q. Was there not three times as much?
A. In some, I would hardly say three times as much, but in those for the shore protection, I would say three times as much.
Q. Any more?
A. I would hardly like to go above that.
Q. Allowing for the trimming also?
A. Allowing fascine for fascine; there was very little trimming to do there.
Q. I think you testified that the growth there is very straight, and with but little foliage?
A. Very little.
Q. The branches are light and easily fold together?
A. Yes, sir, cotton growth and gum trees, which in their early growth are very straight.
Q. Don't they grow to a very good height without any foliage, to any extent, on them?
A. Yes, sir; the height of the fascine used at Augusta.
Q. Straight poles without any brush?
A. Straight poles.
Q. Making a clean fascine?
A. Making a clean fascine of poles.

The following questions propounded by the court were suggested by Mr. Blair:

Q. How much more per square yard did it cost to haul the Augusta fascine than to haul the fascine you have just described, of 1894? How much did that extra weight you speak of increase the cost of transportation per square yard?

776 A. That would depend entirely upon the locality of the brush, and its distance from the works. Where it was constructed at Augusta, the distance was not very great to the landing; it was very short. In some other works, the brush had to be hauled forty or fifty miles on tows. I think that at Fernandina was hauled but a few miles, not more than tow or three. That used at Jekyl Creek some of it was towed from Fernandina to Jekyl Creek, the exact distance of which I am not acquainted with,—when I said forty or fifty miles, I fear I over-stated it.

Q. Then the increase in the cost of transporting the Augusta fascine was made up by the increased distance you had to haul the other fascine,—equalized?

A. I must speak of the work I was on. For the Fernan-

dina work, that was very favorable to the contractor; they had a shell road to haul everything on.

Q. What was the cost of hauling at August, if you know, per square yard?

A. Everything there was considered in the cubic yard.

Q. Well, per cubic yard?

A. I would not like to make an estimate now.

Q. What was the cost of hauling it per cubic yard at Fernandina?

A. I would not like to give an estimate on that.

Q. All you remember is that it was just the same?

A. No, sir; I still think it cost more to haul one hundred cubic yards at Augusta than it did at Fernandina for those two contracts.

Q. I understand that the increased distance at Fernandina—?

A. I said the brush was gotten very near at Fernandina; at Jekyl Creek it was farther off.

Q. How would the cost of transporting one hundred cubic yards at Jekyl Creek compare with the cost of transporting it at Augusta?

A. I think, in that case, that the cost, if not equalized, would be—I don't like to make an estimate on that, as various things would have to be considered closely, the cost of
777 towage, etc. It cost a good deal to tow the brush from Fernandina to Jekyl Creek.

Q. When you spoke just now of the fascines at Augusta containing two or three times more material than certain other fascines you used, you made those fascines in the room here your standard of comparison?

A. I was asked that.

Q. And not the actual fascine used at Jekyl Creek, Fernandina or Cumberland Sound?

A. I referred to the fascines on the platform.

The Following Questions Were Propounded By The Court.

Q. Did you estimate the actual cost of the fascines made at Augusta, per cubic yard, delivered in the spurs?

A. The only way that can be obtained,—the exact cost could be obtained, would be to take the material which I placed in the spurs and shore protection at Augusta and take my cost,—the outlay I was put to in getting labor, etc., and get it in that way. I never made an estimate of the cost of it there.

Q. Do you know the actual cost?

A. I do not.

Q. Did you ever see a mattress of more than one course put in at Cumberland Sound?

A. Yes, sir.

Q. How many courses in it?

A. Up to seven courses, perhaps eight, but seven I remember.

Q. How much stone was put on them?

A. Stone was put on those mattresses, I think, two or three times; that is, when the mattresses were first sunk, a layer of perhaps six inches or nine inches,—something less than one foot.

Q. Was that put on top of the upper course, or was it put on intermediately?

A. It was put on the top course.

Q. None on the lower courses at all?

A. The lower courses, if I remember aright, were of
778 different widths from the top course; therefore, some of the rock would fall on the top course and some on the various widths of lower courses below.

Q. Now, how much stone was put on the top course where the mattress was seven or eight courses high?

A. I should have to refer to note books which are filed away for the exact statement, but, if I remember rightly, about nine inches when the mattress was sunk; then after that, after eight or ten or a dozen mattresses were sunk, they would come back again, and take some barges of stone and distribute the stone over the top of all.

Q. What was the ultimate quantity put on?

A. Not more than one and a half feet, perhaps a foot, thick for the covering.

Q. What was the size of the stone put on, on an average?

A. On an average it was—I could not state very closely the average weight of the stone, but it would vary probably from ten or fifteen pounds up to forty or fifty pounds; perhaps the average might be twenty-five. I have a very vague idea of the average of it.

Q. Under that weight of stone put on top of these mattresses, did you ever notice how much compression there was of the mattresses?

A. Yes, sir.

Q. How much subsidence was there of the mattresses due to the weight of the stone on the mattresses?

A. I would estimate from two to three feet depression; that is, in the seven-course mattress,—a very thick mat.

Q. After there had been seven courses of mattresses laid, how much stone was put on top ultimately,—what thickness?

A. I would estimate one and a half feet; that could be corrected by referring to the records.

Q. Now, what was the total height of the extreme, of the seven courses of mattresses and the eighteen inches of stone placed on top; what height did that form?

779 A. When it would first go into the work?

Q. After you got the stone on it; when you got the eighteen inches of stone on the seven courses of mats, what was the height after they had settled?

A. It would average, I believe,—after looking at some notes the other day,—about a foot to the course; that is, the seven or eight courses of mattresses would give a vertical height of seven or eight feet of jetty after the stone was placed upon it.

Q. That is to the top of the stone or to the top of the mat?

A. The stone, most of it would go into the jetty to a certain extent, so that the height gained by the stone was very little.

Q. How do you mean go into the jetty.

A. It would go down into the brush.

Q. Fall in between the brush?

A. Yes, sir; to a certain extent; it would be so heavy.

Q. After the eighteen inches of stone was placed on top, was the top of the brush mattresses visible?

A. Not very much; no, sir; there might be projecting poles or stakes but very little.

Q. Now, you say that some stone went down into the brush?

A. Yes, sir.

Q. Now, how thick did that leave the average course of the stone; that is, take the plane of the top of the brush and then measure from there to the plane of the top of the stone, what was that distance? How much was there of good, clean stone, of that stratum of stone,—how thick was it?

A. I would give that an average of about one foot. That is an estimate; I never observed it.

Q. Then, about thirty-three and one third per cent, or one third, of the stone went down below the level of the top of the mattress

A. Yes, sir.

Q. In what depth of water was this structure made, this kind of construction?

A. At various depths. It started at a depth—The
780 deep mattresses started where a depth of eight or nine feet of water was shown, but instead of increasing the mattresses beyond seven courses, they remained the same, and the water getting deeper all the time, would leave a depth of from one to five or six feet above them; that is, the sloping bottom at the outer end would give a depth of four or five feet of water on top; at the inner end, the jetty would be at about mean low water.

Q. Now, about the sanding up, how much sand accumulated against and under that structure? What was the character,—the extent of the sanding up?

A. In the in-shore work, as I called it, where there was but one course, or two courses, in many instances, the mattresses would be entirely covered up; that is, you could see the top poles and some of the rock, but the brush, in the main, would be covered. As the water deepened, it would show less sanding up on the sides, but the top of the mattresses would gather sand, and, on one side, the side from which the current was slack, or on the north-east side, there would be shoaling up of two or three feet,—three or four feet along there at the outer end. In my work, in 1894 or 1895, very much of the work was done in shoal water, so that the shoaling up was extensive. Only a short distance,—about a few hundred feet,—did I work in this deep water,—only a few mattresses.

Q. Were there any of these seven or eight course mattresses laid with eighteen inches of stone destroyed by the sea,—carried away.

A. When I left there, there was not. The jetty was in good condition. There were no holes in the jetty. Since then, I cannot report as to what occurred. I have not been on the ground myself, and know nothing about it, but, at the time the jetty was completed, it was in one continuous line without breaks.

Q. Now, I want to understand clearly about the ultimate height of that structure. You said you had seven courses of mattresses, and about eighteen inches of stone on top of
them, and that some of the stone settled in the mats and
781 left about one foot on top; now, what was the ultimate height of those seven courses of mats with that remaining foot of stone on top?

A. The soundings taken a few days after the sinking of each mattress gave me,—in looking up from memorandum—an average of about one foot to the course, or about seven or eight feet vertical depth of jetty for the seven courses of mattresses.

Q. To the top of the stone?

A. To the top of the stone; but in the soundings, we were, of course, not very exact. It would be rough out there on the soundings, and it was more to keep a general track of the condition of the mattresses than to make a close survey of the vertical height of the jetty, so there is considerable error in the soundings taken as shown on an average on the inspectors' notebook; but the idea that I have is that the average height was about seven feet of vertical height, or about one foot to the course.

Q. According to the specifications, what height should each mattress have had?

A. If each mattress was constructed with two grillage poles,—double grillage of poles,—with nine inch fascines between, the vertical height of such mattress would be, supposing the minimum of the poles to be four inches, which I think the specifications call for,—would be twenty-five inches, provided the poles did not settle into the fascines at all.

Q. Suppose the seven courses had been made in exact accordance with the specifications, how high would they have been, with that eighteen inches of stone settled in among the mattresses so that it left a foot of stone on top?

A. If there was no settlement, or no settling in to each other, there would be seven times twenty-five inches added to eighteen inches.

Q. Didn't the bottom grillage of one mat settle into the top of the one below it?

782 A. It would.

Q. Then the first mat would count twenty-five inches; how much would each subsequent mat count in height?

A. In the mats, as they were constructed, there was not this double grillage of poles put in between the fascines.

Q. But, if built according to the specifications, what would each subsequent course have counted in height after making the bottom course?

A. Wit the exception of the lower course, it would be twenty-five inches. I believe there would be twenty-one inches for each course above, allowing four inches for the poles to settle into the mats underneath.

Q. Now, can you deduce from that the height that structure would be, if built according to the specifications, with seven courses of mattresses and eighteen inches of stone, part of which settled into the mattresses, leaving one foot on top?

A. About thirteen feet; a little less than thirteen feet.

Q. It did have what height?

A. It had after settlement due to the weight of the stone, about seven or eight feet.

Questions By The Court Suggested By The Judge-Advocate.

Q. I would like to ask if, in the runis of the old improvements up there in the locality where the wood grows so straight and high before there was foliage, if you saw any indication of such wood having been used in the ruins of the old improvements that you saw at Augusta?

A. Yes, sir; there was the remains of some of the limbs in with the rocks.

Q. Not the limbs—I mean the body of the tree?

The Court: The time for taking testimony has expired; take no more testimony.

783 The Court: If there are no objections, the Court will adjourn until half-past ten o'clock Monday morning next.

(Court adjourned at 3.00 o'clock p. m.

THOMAS F. BARR
Col. & Asst. Judge Adv. Genl,
Judge Advocate.

784 United States Court Room,
Savannah, Georgia.
January 31, 1898.

The Court met pursuant to adjournment at 10.30 o'clock a. m.

Present,

All the members of the Court and the Judge Advocate;
The accused, his counsel and the reporter, G. T. Cann, were also present.

The President: The Court will come to order, all the members are present.

Judge Advocate: May it please the Court, before proceeding with the examination of the witness who was on the stand at the close of our Saturday's session, I desire to make a statement, touching the record of the Court's proceedings. For the first time since the beginning of the Court, the rec-

ord was ready for me last night to examine, and I find that our reporter had been unfortunate in his typewriter in the early stage of the proceedings, and also some misapprehension on the part of the reporter as to the proper transcript to be made touching the administering of the oath to witnesses; but the record will be amended in those particulars. Pages that are not satisfactory, will be re-typewritten and the amendment will be made as to the swearing of the witnesses, and I trust now to be able to keep up day by day with the record, and I would like to ask the counsel, who each day got a copy of the proceedings as they were first typewritten, if at any time they have any objections to make to the record, if they will please state it to the Court.

Mr. Blair: Yes, sir.

Judge Advocate: I believe it has been wholly satisfactory as to the testimony taken.

Mr. Blair: We have not examined it with any great
785 care, but I think there are no material errors in it.

The President: The corrections have been made, you say?

Judge-Advocate: I have indicated the necessary corrections and they will be made, and carefully scrutinized as made, before the whole record is approved.

Judge-Advocate: (To counsel for the accused) You get your copy right straight along?

Mr. Rose: We have not yet got Saturday's.

Judge-Advocate: No, that is not quite completed; the reporter will be in with it in a few minutes.

ELBRIDGE R. CONANT, a witness for the prosecution, recalled, having been previously duly sworn, continued to testify as follows:

Questions by the Court.

Judge-Advocate: When I was examining this witness, I was examining him by the permission of the Court, which I presume still holds good?

The President: Yes.

Judge Advocate: (Reading) "I would like to ask if in the ruins of the old improvements up there, in the locality where the wood grows so straight and high, before there was foliage, if you saw any indication of such wood having been used in the ruins of the old improvements that you saw at

Augusta. A. Yes, sir, there were remains of some of the limbs, not with the rocks. Q. Not the limbs, I mean the body of the trees?"

By the Court: Now, answer that, please, Mr. Conant.

A. I don't know whether I can state whether those were limbs or the body of the trees. In many cases it was an entire tree, a small tree, that was used, not the limbs chopped from the larger trees,—is that the point that you want to bring out?

By the Court: Yes, I want the Court to understand what you saw there.

786 By the Court: You were shown Saturday some letters of instruction as to carrying out the specifications, were you given those at Cumberland Sound in 1894, when you went there after your work under the Twiggs' contract.

A. Yes, sir, just before going, I think I was on some other work. The next contracting job I had charge of was the Cumberland Sound work in 1894 and '95.

By the Court: How was that contract designated?

A. The contract for Cumberland—for the improvement of Cumberland Sound, Ga., and the contractor was Anson M. Bangs.

By the Court: Were you given any verbal instructions in relation to carrying out those specifications at that point?

A. I was, sir.

By the Court: What were they?

A. My instructions for that work were given partly by a telegram, stating where to commence the work, and the number of courses of mattresses and partly were verbal instructions given by Capt. Carter, I think, just previous to any of the work going into place.

By the Court: What were those verbal instructions?

A. The verbal instructions were that the work to be carried on under that contract was to lay a foundation course of mattresses upon which under later or expected contracts, the remainder of the jetty was to be built up of rock, that this foundation course would not require the class of fascines that I had used in my previous work at Augusta, that the fascines should be of finer material and should be constructed in the way, in the same manner that I had seen the fascines and mattresses constructed theretofore or under the contract for 1892 and 1893.

By the Court: Whose contract of '92 or '93?

A. That was in the name of E. J. Gaynor.

787 By the Court: How did the specifications in the Bangs' contract as to fascines differ from those in relation to those in the Twiggs' contract?

A. The specifications were the same, with the exceptions, I think, of the length of the fascines. I think in the Augusta contract the length of the fascines should be 12 to 20 feet, and in the specifications for the Cumberland Sound contract I think it was sixty to one hundred feet, or some different length.

By the Court: Did you ever see a fascine there one hundred feet in length?

A. No, sir, I never did.

By the Court: How long did you ever see a fascine, about what length?

A. They were made to my best memory about 20 feet, so that if I was building a mattress 100 feet wide, that would require a multiple of twenty, or about five fascines to extend the full width, without having them overlap too much.

By the Court: That then would not carry out the specifications?

A. Correct sir, it would not.

By the Court: Now, what other verbal instruction did you have at any time from Capt. Carter in relation to the whole work under the Bangs' contract?

A. The question of rock came up; that was understood to be that I should use the same Florida rock that I had been using previously, and which was passed upon as being what was wanted. The construction of the mattresses was explained; that they should be of so many courses,—I don't remember the number—at one portion of the work they should be single course mats or double course, and in another place they should be three or four courses, and then according to the depth of the water requiring them. The work was

788 also explained in a further light in that I got the understanding that it was not to be carried out in the manner which I had carried out the previous work at Augusta.

By the Court: I don't want your understanding, Mr. Conant, I want what Capt. Carter said.

A. He said he told me that the amount of the appropriation for that improvement was small, that it was coming separate from the other appropriations, that it would give but little benefit to the improvements of the harbor in general, that the work was more for preparatory work for work

to come after, that he did not require, did not wish, the fascines to be constructed in the same manner; in other words, it would be a benefit—well, I cannot state his exact words, but I understood from him I was not to carry out the contract in the specific way, or in the way I had carried out the preceding contract.

By the Court: You don't get my meaning, Mr. Conant, if you do, you don't explain it, I want to know what he stated to you in relation to the execution of the contract by the contractor.

A. He told me that he didn't wish me to carry out that contract, or to build the fascines in the manner that I had just built them at Augusta.

By the Court: You have stated that several times, Mr. Conant, what did he say in relation to the contractor himself?

A. He told me the contractor had bid very low on that work, less than what it could be done for, and he made other remarks.

By the Court: What were they?

A. That he didn't wish me,—I cannot remember the words, I can give you the meaning,—that he didn't wish the contractor pressed in that work; I cannot give you just the meaning of the words that he said to me, but that is the gist.

By the Court: Those were the instructions by which 789 you considered yourself bound, were they not?

A. Yes, sir.

By the Court: How often did he visit the works at Cumberland Sound at that time?

A. I think, I cannot say, about six times, I think. I have a memorandum about that. (Here the witness takes a memorandum)

Mr. Blair: A memorandum just made?

By the Court: Is that a memorandum just made?

A. The memorandum was handed to me.

By the Court: Well, is it one of your own memorandum?

A. No, sir.

By the Court: Then you need not refresh your mind with that.

A. I can give you approximately about six or eight times.

By the Court: Well, that is near enough; it is not particularly important. Did he accompany you to the works when you first entered upon your duty there?

A. Yes, sir, the works were very near the station and could be seen from the station, and he visited the works frequently.

By the Court: On your first visit there, did he accompany you or not?

A. I think on my first visit there was nothing to be done.

By the Court: He did not accompany you to go over the works or explain it?

A. No, sir, not on the first visit.

By the Court: Did he go over the specifications with you at any time?

A. No, sir.

By the Court: Over how many months did the Bangs' contract extend?

A. From November or thereabouts until the next May or June. June I believe,—June or July. I would have to
790 look that up to give the exact date; somewhere from November to July.

By the Court: How did you come to make a calculation as to the profit the contractor made under that contract?

A. I made it for my own benefit; I was not asked to make it at all; it was not an official matter.

By the Court: What was the actuating reason?

Mr. Blair: I submit, that has nothing to do with it.

Judge-Advocate: I think it follows the statement that the contractor had a losing contract.

Mr. Blair: Well, if what everybody thinks can be brought into the case,

Judge-Advocate: No, this is certain action taken by him; action taken as an official; he could not divest himself of his official character.

By the Court: What led you to make that estimate, Mr. Conant?

A. From personal motives.

* * * * *

791 Witness: The question was, I believe, what was my motive in making this estimate?

By the Court: What was your reason, not your motive.

A. My reason was for my own personal motive, and having no connection whatsoever with any official report, or with the contractors, or with Capt. Carter. It was the beginning of my engineering experience in this sort of work, and as heretofore, on other works I have been on, sewer work and various other works, I would make an estimate to enable me

to get an idea of the cost of that sort of work. I did it for that reason.

By the Court: Did you keep the estimate which you did make, secret?

A. No, sir, I didn't keep it secret at all.

By the Court: Did you make it known to the contractors?

792 A. Yes, sir, I showed it to the contractors, for this purpose—I wished to see if my estiamte included some expenses which they could show me better than myself, asking them if they could point to any item I had wrong, or any item I had left out.

By the Court: Give that.

A. My memory is that they told me that I had a very fair estimate. I don't know just the statement they made to me, but that was the impression it conveyed.

Judge Advocate: I presume counsel have the right to cross-examine?

The President: Counsel have the right to cross-examine.

Cross-Examination by Mr. Blair.

By the Court: You said, Mr. Conant, yesterday or Saturday, that Capt. Carter told you not to get stone for Mr. Twiggs?

A. Yes, sir.

By the Court: State precisely what the conversation was you had with Capt. Carter—all of it.

A. Yes, sir. Previous to the expiration of the contract I had written in my reports to Capt. Carter that satisfactory progress had not been made, that material was not delivered on the works. A letter to me, I cannot remember the date, but it is on file, I think stated that the contractor can use fascines of somewhat lower grade, that is, containing more fine material, than I had been using, but to keep the work so that the stone and fascine work was in proportion, that is, not to let the fascine work get too far ahead of the stone work. His conversation, when we were at Augusta, just previous to making the contract with Mr. Twiggs, was that he was not able to bring the material to the works in such quantities as to keep the proportion of stone and of mattresses any where alike, that it was better to do the work independent of the contractor.

By the Court: That is, you made the statement to
793 Capt. Carter that Mr. Twiggs could not furnish his material fast enough, is that it?

A. I believe I did. I found I made some such statement that he didn't furnish the material fast enough to make the required progress in the work; the fascines.

By the Court: Then the inference was which you made that if he could not furnish the material for his own work, that he could not also in addition furnish it fast enough for the Government to work alongside of it?

A. That is true that he could not furnish the material, by material I wish it understood that it was the fascine, the mattress work. I did not say that he could not furnish stone enough to do the work, but that he could not furnish the fascines, and therefore, could not furnish stone to sink the mattresses, and keep it in condition.

By the Court: And your report was to Capt. Carter that he could not furnish material fast enough for himself and therefore, it was to be presumed that he could not furnish material fast enough for himself and the Government?

A. There is some report to that effect, yes, sir; a written report, I would like to have it referred to, if it is on file; my tri-monthly report.

By the Court: The fact was on this supplemental contract, that the Government and Mr. Twiggs were working side by side on the same work, were they not?

A. Side by side.

By the Court: Mr. Twiggs was doing what work he could. and the Government was doing work itself.?

A. Yes, sir.

By the Court: Both mattresses and stone?

A. Both mattresses and stone.

By the Court: Mr. Conant, do you remember a con-
794 versation which you had with Capt. Carter and myself (Mr. Blair) last Friday evening, between 10.30 and 11 o'clock, in the rotunda of the De Sota hotel?

A. I do sir.

By the Court: Do you remember at that time making the statement that the fascines used at Cumberland Sound did not look anything at all like these fascines in the Court room here?

A. I don't think I said, "didn't look anything like the fascines"

By the Court: Did not resemble?

A. You asked me for a comparison; I said I didn't think the fascines used at Cumberland sound,—that the fascines on the platform was a fair representation of the fascines used at Cumberland Sound during '94 and '95.

By the Court: Well, that's true, is it not?

A. Yes, sir, that's true.

By the Court: Do you remember at the same time and place, stating to the same persons that the fascines in 1894 and '95 at Cumberland Sound were so heavy that it took two men and sometimes three men to lift and handle one fascine?

A. I was asked if it did, and I did say that it did take two men to handle those fascines, loading them from the wagon; as to more than two, I cannot say I did: I did say there were more than two men around the wagon, sometimes undoubtedly assisting one another I do think that two men could handle the fascine, but not one.

By the Court:—And that it took two men because of the weight of the fascines?

A. Yes, sir, because of the weight.

By the Court: Now, when you made a comparison on Saturday between the fascines here in this Court room and the fascines at Cumberland Sound, and stated in effect that the fascines at Cumberland Sound contained 15 to 20 per cent more brush than the fascines here, did you mean
795 than the fascines here now or these fascines as they would have appeared when new, when green?

A. If the weight was considered, it would be more, because these are dry and light; if the brush is considered, there is practically the same amount of brush in the fascines now on the platform, as when the fascines were cut. There may be some more leaves or twiggs that are broken off, but as to weight, they are very much lighter than when they were green.

By the Court: And your comparison was between the two sets of fascines, both being green?

A. Taking it that way, both being freshly cut.

By the Court: You made the statement a while ago that when Capt. Carter gave you instructions at Cumberland Sound and told you about the different kinds of fascines required in that work, from the kind required at Augusta, and you said in substance that the fascines you had at Cumberland Sound would be for the benefit, and then you stopped; for the benefit of whom? Making the different kinds of fas-

cine at Cumberland Sound from the kind you did at Augusta, you said that Capt. Carter told you that the kind down on Cumberland Sound would be for the benefit, and there you stopped and did not complete the sentence. For the benefit of whom,—did Capt. Carter tell you?

A. That demands an explanation. I started, if I remember aright, when I started on that remark,—that the fascines, that the contract for the Cumberland Sound called for, were for the purpose from an engineering point of view, of collecting silt and formed of a different material from the fascines used at Augusta. I think that was what I started to say when I was stopped.

By the Court: And that change was for the benefit of whom?

A. From an engineering point of view, that if the same material was not carried there, that the Government would receive the same benefit from that material which was there.

796 By the Court: Did he say the Government would receive the same benefit from the brush fascines at Cumberland Sound, the same benefit as it would receive from a fascine made of poles?

A. He did tell me that the fascines would give the same benefit as if they were in accordance with the requirements of the work at Augusta.

By the Court: Then it was for the benefit of the Government that the change of construction was made, was it, and not for the benefit of the contractors?—The benefit of the Government was not it?

A. No, sir, I cannot answer that it was for the benefit of the Government. I think it was for their benefit too.

By the Court: Who was present when that conversation occurred?

A. There was present the contractor himself, but I don't know whether he was within hearing of what was taking place or not, I believe there was nobody else present when that conversation took place.

By the Court: You saw the contractor?

A. The contractor was on the ground and in the building.

By the Court: You say the "contractor," do you mean Anson M. Bangs?

A. Excuse me, when I say the contractor, I mean a representative of the contractor was on the works, Mr. Gaynor.

By the Court: Which Mr. Gaynor?

A. Ed. Gaynor.

By the Court: Was he in the room?

A. When I say Ed Gaynor, I think it was Edward Gaynor; it is barely possible it was his brother; it was either Edward Gaynor or William Gaybor.

By the Court: Did you say he was present in the room?

A. I don't think he was in the room when the conversation took place, he was in the lower story of the building.

797 By the Court: When this particular statement was made to you as you say, by Capt. Carter, nobody heard it?

A. Well, I cannot say, of course, whether he heard it or not; he was in the building, but in the lower story. I don't say that he did not hear it; I don't say he did not hear it, but I don't think he could have heard it unless he was within the immediate vicinity, that is, in the same room. He was not by our side, he was not standing near us.

By the Court: Then you don't know positively that he was in the room when that particular statement was made.?

A. When that particular statement was made,—no sir, I do not.

By the Court: What is your best recollection?

A. My best recollection, and I am sure he was not near us; he might have been within the thresh-hold of the door, and he might have been in another room.

By the Court: This contract with Mr. Twiggs began on the 5th, of August, you stated work began,—was not it on the 10th of August, that's right, is it not?

A. Yes, sir.

By the Court: Was satisfactory progress made the first thirty days?

A. No, sir.

By the Court: Was satisfactory progress made the second thirty days?

A. No, sir.

By the Court: Was satisfactory progress made the last thirty days, the thirty days of the extension during October?

A. He was allowed to perform such work as he could from that time on until after the contract was taken away and the supplemental contract was made.

By the Court: I am speaking of the time before the supplemental contract, say, October?

798 A. No, sir.

By the Court: So in August, September and October, satisfactory progress was not made by Mr. Twiggs?

A. No, sir.

By the Court: Didn't you report at the time of the extension, to-wit, Nov. 5th, that Mr. Twiggs had done only approximately about one third of the work required?

A. It is contained in the report, some proportion, I don't know whether it was one third, one fourth or one fifth. I have not read the report since it went to the office.

By the Court: It was not more than one third?

A. I should ask to have the report referred to.

By the Court: I will ask you to read that at the bottom of the page, is that your handwriting?

A. Yes, sir.

By the Court: Now, refresh your memory by it, and I will ask you the question.

A. (Reading) "Work proceeding very slowly, and on October 5th, the expiration of his time of contract, but one sixth of the work had been done, as the water had been high on several days, I recommended that he should be allowed an extension of 14 days. Still the progress of the work remained unchanged, and—" do you wish me to continue reading, or is that the point you wish to bring out?

By the Court: Yes, go on. I want to know on the 5th, of Nov. how much of the work had been done.

A. I will continue until I come to it, (Reading) "Still the progress of the work remained unchanged and I urged him from time to time to increase his force, which he promised to do. Another extension of his contract is granted by me Nov. 19th." I have nothing here about Nov. 5th he had com-
799 pleted about one third of the work.

By the Court: You were asked Saturday if any payment had been made to Mr. Twiggs under the original contract?

A. Yes, sir.

By the Court: And you answered no?

A. I think I answered that I did not think that there was any payment made, that that could be rectified by referring to the office record; the payments to Mr. Twiggs or any other contractor never passed through my hands; it is not customary.

By the Court: But so far as you know, he had not been paid?

A. Yes, sir, as far as I know.

By the Court: You have seen the contract with Mr. Twiggs, have you not?

A. At the time, sir.

By the Court: Do you know of the provision, "Payments shall be made to the said Albert J. Twiggs monthly, if satisfactory progress is made."

A. Yes, sir.

By the Court: That contract called for about $20,000 worth of work, did not it?

A. To the best of my recollection.

By the Court: And was a two months' contract originally, from the 5th, of August to the 5th, of October?

A. Yes, sir.

By the Court: Had he done $10,000 worth of work at the end of the first 30 days?

A. No, sir.

By the Court: Had he done $5,000 worth of work at the end of the first 30 days?

A. I think not, sir.

By the Court: Did the work at any time between the 800 5th, day of August and the 5th, day of November, when the supplemental contract was made, progress at the rate of $10,000 worth of work per month?

A. No, sir.

Mr. Blair: In order that it may go into the record at this point, if the Court please, I will read the provision of the contract between Mr. Twiggs and the United States, with reference to payments: Section 46 of the specifications—"Rate of progress of work.—Work must be begun within 60 days of the signing and approval of this contract and must be vigorously pushed at such rate that the contractor shall earn not less than $10,000 per month. The delay of ten fair working days on the part of the contractor to perform the average daily amount of work specified shall, at the discretion of the Engineer Officer in charge, subject the defaulting contractor to a forfeiture of his contract and all money remaining unpaid on account of work done under said contract." This is in the body of the contract on the last page thereof. "Payments shall be made to the said Albert J. Twiggs monthly if satisfactory progress is made, when the work contracted for shall have been delivered and accepted, reserving 10 per cent from each payment until the whole work shall have been so delivered and accepted."

Judge Advocate: I would ask the counsel to note the fact that the words "Monthly if satisfactory progress is made" is not in print, but in typewriting.

Mr. Blair: Also the name of Albert J. Twiggs.

Judge-Advocate: Necessarily that would be inserted.

Mr. Blair: And also the major part of the first page is in typewriting.

Judge Advocate; Certainly but the provision as to payment is an interlineation.

Mr. Blair; There is no suggestion that the interlineation was made after the execution of the contract?

801 Judge Advocate: Not at all, I simply want that noted at this stage, when the other part was put in.

President: There is the same provision made in the specifications.

Judge Advocate: It is not in the specifications, there is a provision as to the annullment of the contract, but not as to the monthly payments, and a further provision, that the general form of the contract can be seen at the office of the Engineer.

Mr. Blair: I call your attention to the Atlantic Contracting Company contracts of eighteen ninety six which have the same interlineation.

Judge Advocate: All right, I am willing to admit it may be in all the contracts, but I call your attention to the fact that the specifications on which the bids are made, do not require it.

President: The specifications give the mode and date of payment, don't they, they provide for monthly payments with 10% deductions, don't they?

Judge Advocate: I will read to the court, that feature. The provision in the specifications, under which the bids are made, will be found in the thirty-fourth paragraph: "Payments will be made monthly; a percentage of ten percentum will be retained from each payment until the completion of the contract.

President: Now read from the contract, if you please,

802 and see if there is a conflict.

Judge Advocate: Paragraph 25. (Reading) "The contract which the bider and the guarantors promise to enter into, shall be, in its general provisions, in the form adopted and in use by the Engineer Department of the Army, blank forms of which can be inspected at this office, and will be fur-

nished if desired, to the parties proposing to put in bids. Parties making bids are to be understood as accepting the terms and conditions contained in such form of contract."

President: Now, if you please, refer to the contract itself and read it, and see if there is any conflict.

Judge Advocate: This is from the Twiggs proposal, upon which the contract is based.

President: You read from the specifications?

Judge Advocate: I read from the specifications on which his proposal was based, and the contract was based upon his proposal.

President: What is the fault between the stipulations in the specifications and in the contract itself?

Judge Advocate: That there is this insertion: "Payments shall be made to the said Albert J. Twiggs" and in addition to that there is put in type-writing "Monthly, if satisfactory progress shall be made" It does not say, satisfactory to whom, but simply says, generally.

Mr. Blair: I think I see the point which the Judge Advocate desires to make, and in order that the whole matter may be together in the record, I desire to call the Court's at-
803 tention to paragraph thirty-four, of the Savannah Harbor Contract of eighteen ninety-six, of the Atlantic Contracting Company, in which the subject of payment is discussed, and in which it is stated that payments will be made monthly when funds are available, ten per-cent being reserved until the total amount thus retained is equal to ten per cent of the cost of completing the remainder of the contract as estimated by the Engineer Officer in charge, and it is not stated in the specifications in the Savannah Harbor Contract—there is nothing said in the specifications for the Savannah Harbor Contract with respect to payments if satisfactory progress is made. In the body of the contract for the Savannah Harbor Contract, with the Atlantic Contracting Company in eighteen ninety six, the same insertion is made with respect to satisfactory progress as is made in the A. J. Twiggs Contract, that I believe in precisely the same language. (Reading) "Payments shall be made to the said 'The Atlantic Contracting Co.' monthly, if funds are available, and the required progress is made in accordance with paragraph thirty four of the accompanying specifications.

Judge Advocate: Now, also read from the contract what progress was required under that contract which you have just read.

Mr. Blair: (Reading) "Rate of progress of work"—"Work shall be begun within sixty days of the date of notification of approval of the contract and shall be prosecuted vigorously at such rate that the contractor shall earn, by the close of the fiscal year, ending June 30th, Eighteen ninety-eight, and during each subsequent fiscal year, until completed, the amounts pledged by Congress under the Act of June
804 Third, Eighteen Ninety-six, from which amounts, however, the necessary sums for Superintendents and contingencies must be deducted."

Judge Advocate: Now, I am willing to state without troubling Mr. Blair, to read from the contracts, that that is found in a majority of the contracts made with the Atlantic Contracting Company, that in the contracts, the same provision as to payment and progress, will appear, notwithstanding that it is not called for by the specifications and is not the form of contract which the bidder would be shown if he went to the Engineer's Office.

President: You mean the specifications are qualified in that particular?

Judge Advocate: I offer in evidence, may it please the Court, the form of blank contract, which is shown a bidder if he should call to see one; to be attached to the records and marked "exhibit 64"

By The Court: I would like to ask the question: Taking the average character of seven course mattresses that were built at Cumberland Sound in eighteen ninety-four, I would like the witness to tell me, how much material in brush, and in binder-poles there was to one square yard of that jetty or mattress: After allowing for the compression of the seven courses of fascines by the weight of eighteen inches of stone, and allowing also the proper proportion in volume of binder-poles. I would like that in cubic yards, and taking the contract price at fifty seven cents a square yard for single mattresses, I would like to know what they cost the Government per cubic yard and per cord?

805 A. Major Stanton, I don't think that without more time than I think the court would wish to give me now, I can answer that question, that is, a portion I can answer. The proportion of the poles and brush in that small section of mattresses would require some time for me to figure that out. I can perhaps answer a part of it, but could not go into details, and I shall like to give a fair answer.

President: The court withdraws the question, at the present time.

Judge Advocate: Mr. Conant, you came to me when the court had retired for deliberation and said you had some corrections to make; can you make them without having the testimony read to you?

A. I can sir.

Judge Advocate: Proceed.

A. I was asked the question as to the number of laborers employed by the contractor at Augusta; I read a few statements from my note book, but I do not think that that gives a satisfactory answer to the question, and would ask to refer to some of my ten days reports which I have here. They are impartial. During the ten days, ending August the tenth, that is the first ten days of the work, the average number of the employes, the laborers, was sixteen, for the working days of that ten days, the laborers. There was one foreman, with the exception of one day, when there was two; the next ten days between August the eleventh and August the twentieth,

I think the average number of laborers was sixty-seven.

806 Now, in this number I include as laborers, those at the quarry, and his laborers at the brush camp, and his laborers in making the mattresses, and the same in depositing the material. From the eleven days between August the twenty first and the thirty first, the average number of laborers was forty nine; from September the first to September tenth, twenty-six; from September tenth to September the twentieth, thirty-eight; From September twentieth to September thirtieth, seventy-five; I can go further, if you desire.

Judge Advocate: I am not asking you now, it is for yourself.

A. I do it in justice to the Contractor. I made a positive statement that no brush went into the mattresses at Cumberland Sound, as good as that that went into the work at Augusta; at Augusta, there was, at one time, about seventy yards rejected. I received a letter from Captain Carter saying that a slightly, I don't remember just the words, that fascines could be put into the lower part of the mattresses with less weight of material than they used before I used those fasceines, or the ones rejected. Those fascines I do not consider any better than many of the fascines used at Cumberland Sound, so that my statement that no fascines were used was erroneous, and I wish to make that modification. I also made a statement in regard to the silting of the spurdams

at Cumberland Sound, and compared them with the silting in Augusta; in that, I said that the spurs at Augusta were not intended to silt up, did not silt up. I am wrong in that,
to some extent, a portion of the spurdams at Augusta
807 would not silt up, the material would not gather between
them, and in Major Stanton's question to me, comparing the fascines at Cumberland Sound with the fascines mentioned in the specifications, and the vertical height of the jetty, I found this morning in looking over my sounding books, that the vertical height of the jetty obtained by the seven course mattresses was just at the time of the sinking, somewhat more than a foot to the course, but after the total settlement, after a month or so, and the jetty was in place, my statement was correct, but just at the time of the sinking, when the stone was put on, or when the mattress was put there, there would be something more than a foot rise, for each course of mattresses; if it could be readily referred to, I would also like to ask what I said about the material in the fascines at Cumberland Sound, in answer to Major Stanton's question.

Judge Advocate: The question is, How much, as compared with the quantity the specifications required to go into them, and your answer is, "now these specifications are interpreted in different ways, by different Engineers" that is your answer and you continue "as I have found out since I have been here, and each one has a different interpretation. It is pretty hard for me to say what percentage you should think should go in, or what I might think. I think myself, that there should have been more material in a fascine than what is shown on the platform to come up to the specifications; as to just how much more, it would be hard for me to estimate, but
it should be more compact; there at Cumberland Sound to
808 accomplish the project, a fascine of about that character
would select the silt and sand more quickly, more readily."

Witness: That is enough of that, I don't wish to refer to that, it is simply in regard to the material placed in a fasceine, the amount, I had recollected that I didn't give the correct answer in regard to that, and wish to so state; I wish to corroborate that and say, I do not think they were made as carefully as what the specifications would intend, that the amount of material required to come up to the specifications would be very much more than what is shown in

the fasceines on the platform. If I said ten or fifteen per cent more, I should say very near double more.

Judge Advocate: I think you did not testify to that, you testified there was used, ten or fifteen perhaps fifteen or twenty per cent used more in those fasceines; that was not your answer as to what should have been used. What was used, that was your testimony.

A. Now, I say, what should have been used.

Mr. Rose: He did testify as to what should have been used in another part of his testimony he testified as to what should have been used.

Judge Advocate: Is that all?

A. That is all.

President: The question asked by the court was withdrawn for the present.

Judge Advocate: Is it to be renewed by the court

By the Court: It will be renewed subsequently, if the witness will prepare the answer at his convenience.

809 Judge Advocate: You can prepare the answer to that question.

A. Yes-sir.

Mr. Blair: I presume the Judge Advocate will warrant him not to consult with anyone.

Judge Advocate: It would certainly not be proper the question is to come from you alone and not from anyone else.

At this point reporter Geo. T. Cann, was relieved by reporter W. O. Tarver.

810 ALBERT J. TWIGGS, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by the Judge Advocate.

Q. Will you please give the reporter your full name and place of residence?

A. Albert J. Twiggs, Augusta, Ga.

Q. What is your profession?

A. Civil Engineer and Contractor.

Q. Where were you educated?

A. Virginia Military Institute.

Q. When did you leave there?

A. In 1871.

Q. Since that time you have been engaged in your profession?

A. Yes, sir.

Q. What has been the nature of your duties?

A. Do you mean from that time until now?

Q. From that time forward, showing the labor in which you have been engaged?

A. For a few months I did nothing; then I was employed as a bridge engineer under John D. Clark; then for a short time on the South-side Road, Virginia; then I went on the Port Royal Road as Assistant Engineer, and after the road was completed, for a short time I did nothing.

Q. That was in the construction of the road?

A. Yes, sir. I did some little work around Augusta of a private character, and was afterwards an engineer of bridge construction on the Port Royal Road; then later on the following year, I was made Chief Engineer and Roadmaster. I served in that capacity for about two years. I resigned, I think, about March, 1877,—somewhere about there. I went to Virginia, and spent the summer in Staunton, Va., and did some work on the water-works there. I was then appointed Assistant Engineer on the Augusta & Greenwood
811 Railroad, and served for a few months, and was made Chief Engineer of the Augusta & Knoxville R. R. After the completion of that road, I was made General Superintendent, and held that position until the Savannah Valley Road was to be laid out, and I took that by contract.

Q. Was that your first contract?

A. Of any importance. I helped to build a small road, the Louisville & Wadley Railroad, of about ten miles, during the time I was superintendent of the Augusta & Knoxville Railroad. I gave up the railroad business at that time, and went to contracting; that is, I commenced work on this Savannah Valley Road, which was not completed, as the funds gave out. After that I then went down to Georgetown, and built, and furnished all the cars and equipment for the Georgetown & Lane Railroad. After building that road, I worked for a short time in Phosphate Works near Charleston. At the end of that time, I went back to the Savannah Valley road, and completed it. At the completion of that road, I went to the Cape Fear & Yadkin Valley Railroad, and built a portion of that road. Then I built the Augusta Southern road, running out eighty-one miles from Augusta, and also the Au-

gusta, Edgefield & Newbury Railroad, and I did a lot of the stone work for the City of Augusta on the dam after the freshet of 1888. I have since kept up and built all the iron bridges in Augusta, except one or two minor ones, and I did all the canal work. I built all the large dams around Augusta, including those at Langly and Bath, and I do generally all that character of work in that neighborhood. I built the Augusta Belt Line year before last, and last year the Augusta Terminal, and I now have the contract to build the Augusta Water-works.

Q. How large a contract is that?

A. About three hundred thousand dollars.

Q. Have you ever had any trouble on any contract on which you have entered?

812 A. Only with one, and that was with the Government. I omitted to state that I had a contract with the Government.

Q. That is the only contract in which you have been engaged on which you had any trouble?

A. Yes, sir.

Q. Have you ever made any efforts to obtain contracts in this Engineering District upon Government work?

A. Yes, sir.

Q. Hof often?

A. Twice, I think.

Q. In what years?

A. I don't remember the years exactly. I bid once on a contract below Augusta at the same time that Mr. George Denning of Augusta put in a bid. I don't remember the year.

Q. That was on the up river improvements?

A. No; that was below Augusta.

Q. But up the river from here?

A. Yes, sir. Then I put in a bid, I think above Augusta, on that work, if I am not mistaken; and then the contract I got in 1893.

Q. How did you obtain the specifications when you had it in contemplation to make bids?

A. I wrote to Capt. Carter for the specifications, and he sent me one copy. I then wrote a second letter for the two remaining copies, and got them.

Q. Each time you had it in contemplation to bid, you received but one copy of the specifications upon making your application?

A. I would not state every time, but as many as twice.

Q. Did you ever refrain from bidding at any time after you had prepared to bid?

A. Yes, sir.

Q. Upon what occasion?

A. Upon the occasion of the contract in 1891 below Augusta, previous to the one I executed.

Q. Under what circumstances?

813 A. I came down to Savannah with the intention of making a bid, and I met Mr. Gaynor——

Q. What Mr. Gaynor?

A. Mr. John Gaynor, Col. Gaynor, I think,—and I had a conversation with him, and he proposed that we should do the work together.

Mr. Blair: I presume, if the Court please, that the purpose of this question is to introduce similar evidence to that which was introduced the other day with respect to a conversation between one of the Gaynors and somebody else in the absence of Capt. Carter. The witness has started to state such a conversation and we object to the admission of such evidence. I understand, if the Court please, and it is so stated in the first volume of Winthrop, citing an opinion of one of the Attorney Generals, that a Court Martial is bound by the ordinary rules of evidence that obtain at common law. (Addressing the Judge-Advocate) Is that the object of the question?

Judge-Advocate: The object of the question is not to show conversation, but acts.

Mr. Blair: I will let it proceed a little further before I object.

Judge-Advocate: Conversation necessarily attends the act, and the conversation will be necessary for the understanding by the Court of how the actions came about. I conceive that that was covered by the ruling of the Court when the question was raised before.

Q. (Judge-Advocate continuing) You did not bid?

A. I did not.

Q. You were about to give your reasons when Counsel interposed his objection?

A. Mr. John Gaynor approached me at the hotel——

Q. Was Captain Carter present?

A. No, sir; I don't think I saw Capt. Carter during my visit down here at all on that occasion.

814 Q. Go on.

A. Mr. Gaynor proposed, as I said——

* * * * * *

818 Judge-Advocate: You will answer my question, Mr. Twiggs.

A. Mr. Gaynor proposed that I should enter into this contract with him, and I told him that I wanted the rock work, and, after considering the work some hour or two, we concluded that I should do the rock work, but it wasn't quite as much as I thought I ought to have; then he gave me five hundred dollars additional. The five hundred dollars he paid. I didn't bid; I went back home.

Q. Was the five hundred dollars paid before or after the bids were opened?

A. After.

819 Q. Where was the contract to be executed? Where was the improvement to be made?

A. It was to be made below Augusta; it was the contract of 1891,—the one previous to the contract that I executed.

Q. And how near to the point where the improvements were made under your contract?

A. At the same place; I prepared nearly all the work that he did at that time.

Q. That he did under that contract of 1891?

A. Yes, sir.

Q. Now, as to your contract; I will ask you, to have interrogatories, to begin at the beginning as to your first application for your first specifications, and carry it out to the times the bids were opened?

A. Capt. W. T. Gibson, of Savannah, I think, sent me a paper with the advertisement in it. I was looking for it, as I had asked him to do so, he being a Savannah man, and, as soon as I got it, I applied to Capt. Carter for specifications. He sent me one copy, and then I wrote, asking him for the other two copies. On June 10, 1893, I received a letter from Capt. Carter enclosing the two remaining copies.

Q. That you had asked for?

A. Yes, sir. I looked over the ground pretty thoroughly, and came down on that occasion to make a bid. I then met Mr. Edward Gaynor, I think it was. I think that was his name, and he came to the hotel to see me, and asked me if I intended to bid on the work, and I told him yes, I did, and he said, "I know you and John had a little difficulty on the

last work, and he don't like to have much to say to you, but I thought I would come to you, and talk to you on the subject." I said, "What do you want?" He said, "Well, what will you take to go home, and not bid on that contract?" I told him that I was going to bid; that the Gaynors didn't have money enough to give me to keep me from bidding. He
820 said, "You can't make anything on it." I said, "maybe not, but I am going to bid on it anyhow", and he continued to talk to me on the subject and make me offers. He offered me one thousand dollars before the bids were opened. He had two bids in his hand. In the meantime, John Gaynor joined Ed, and made me the same proposition to pay me a thousand dollars, and made it up to five minutes before we went into Capt. Carter's office, and the bids were put in. I think a man by the name of Grant put in a bid also. My bid being the lowest by four hundred dollars, or something in that neighborhood, Capt. Carter recommended the acceptance of my bid.

Q. The contract was awarded to you, and you entered into the contract; do you recall the day when you were to begin work under it?

A. I think it was about the 5th of August. I actually began on the first day of August.

Q. After you had secured the contract, were you approached by anybody,—after the bids were opened?

A. Yes, sir; Ed Gaynor asked me why not let them have it, and I said, "It is out of the question now". He said, "You can just throw up the job, and not do it." I said, "How about my bondsmen; I have given a bond to execute the contract." He says, "Oh, we can attend to that."

Q. Did you know before the bids were opened how many bidders had sent in proposals?

A. No; I knew there would be at least three.

Q. How did you know that?

A. Because there was a man by the name of Grant here who would bid, at least I supposed he would.

Q. That you knew of your own knowledge. Did you acquire any information of the number of bidders expected to bid?

A. No, sir; not on that occasion. On the previous occasion I did,—on the occasion that I did not bid.

Q. Then, we will go back to that. What information
821 did you acquire then as to the number of bidders?

Mr. Blair: From whom?

Judge-Advocate: From any person.

A. From Mr. John Gaynor, I got it.

Q. You did get the information?

A. Yes, sir.

Q. And from Mr. John Gaynor?

A. Yes, sir.

Q. How was it imparted to you?

A. I suggested to Mr. Gaynor that probably there might be some other bid put in. He said, "Oh, no, there is not." I said, "How do you know"? He said, "I will find out," and he wrote a note, and called a bell boy, and sent it off. I don't know where he sent it to, but I thought he sent it to the Engineer's office.

Q. He sent out a note?

A. Yes, sir.

Q. And received a reply?

A. Received a reply, and said, "There are no other bids". He made the statement after he received the reply.

Q. That was for the contract of 1891?

A. Yes, sir.

Q. Having received this contract, work upon which was to be begun August 5th, when did you begin work?

A. On the first day of August, Tuesday morning.

Q. What was the character of your work then?

A. I began to get fascines.

Q. What steps did you take towards entering upon your contract? What help did you gather together?

A. Mr. Gaynor had just finished a contract on the up-river—

Q. Which Gaynor?

A. I don't know which Gaynor; it was the concern of Gaynors, but I don't know which.

Q. Well?

822 A. And there was a contract that had been begun sometime previous to that, and I left it, and went back and finished it during the spring. The hands he had there—I went then in a few days,—I don't remember the exact time, but a very short time,—down to my brush camp. I employed the same foreman he had had, and the principal men in the camp were the ones that had worked for Mr. Gaynor.

Q. Did you yourself employ these men, or did you permit the foreman to employ them?

A. I permitted the foreman to employ the men.

Q. Or to designate them for employment?
A. Yes, sir.
Q. How many men did you employ?
A. I don't remember, but something over twenty.
Q. Do you remember what you paid them?
A. Seventy-five cents a day.
Q. All but the foreman?
A. All but the foreman, and I gave him a dollar.
Q. How did you get your material together?
A. I made; that is, the men made the benches by driving stakes in the ground, and cut the brush, and proceeded to make the fascines.
Q. Those were the ways on which the fascines were to be constructed?
A. Yes, sir.
Q. Where did you purchase the material?
A. I purchased it from Mr. Dunbar Lamar at that particular time. At least, I didn't purchase it; he gave it to me. He didn't charge me anything for it.
Q. What did you first tie the fascines with?
A. I bought from the Augusta Hardware Co. some lath-yarn that they told me Mr. Gaynor had used, and they had left. I asked if that was the proper material to use, and they said, "Yes, it is exactly like what we sold Mr. Gaynor; this is a part of it."
823 Q. When did you first see Capt. Carter after the contract was entered upon?
A. On Wednesday morning, August 2nd.
Q. Who was with him?
A. Mr. Conant.
Q. That was August 2nd?
A. August 2nd; yes, sir.
Q. How many men had you employed when he came there?
A. I don't know, sir; some twenty or thirty probably.
Q. How many fascines had you constructed?
A. I suppose between one and two hundred, something like that. We had just commenced; we did a little work on Tuesday and up to the time Capt. Carter got there on Wednesday morning.
Q. Did Capt. Carter visit the brush camp?
A. Yes, sir. I met Capt. Carter at the hotel, and he introduced me to Mr. Conant. Capt. Carter drove down to the brush camp in the buggy with me, and Mr. Conant drove a buggy behind. Capt. Carter visited the camp, and looked at

the fascines, and said they would not do, and he said he would show me how; and he took a hatchet, and cut the strings of a bundle, and trimmed everything off except the poles, and he put it in, and put several others in the bundle himself, and instructed the men that that was the way he wanted it built; and he said that the lath-yarn would not answer, that I must get wire. I told him that that was exactly the same as that which had been used by Mr. Gaynor, and he said he didn't think so, if Mr. Gaynor used that kind, he would like to know, and I told him I could soon satisfy him when we got back to Augusta, that I would go to the Augusta Hardware Co's. with him, and they would tell him what Mr. Gaynor had used, and we did. Capt. Carter and myself went back and met Mr. Dougherty, who was the senior member of that concern, and Capt. Carter asked him what kind of material Gaynor had used, and he told him what it was exactly, and Capt. Carter told me, "I didn't know he was using this kind of material here, and it will not do for this work." Then after that, I got the wire.

824

Q. You got your wire, and used it for those fascines?

A. Yes, sir.

Q. How about the instructions as to choking?

A. He told me I must get chain chokers, and use long levers, and that the fascines must be choked down to nine inches. I then got the chain chokers, and made the fascines as near like Capt. Carter told me and showed me as possible to do, and Mr. Conant improved on it a little.

Q. You had to take apart all the fascines which had been constructed?

A. Yes, sir; I took apart all the fascines that had been constructed and used the material to construct others.

Q. Now, had you seen the fascines used in that contract of 1891?

A. Yes, sir.

Q. At that place?

A. Yes, sir; I made myself very familiar with that contract.

Q. Had you seen them constructed?

A. Yes, sir.

Q. Had you been present when they were made?

A. Yes, sir.

Q. Were they choked in the manner in which you were required to choke the fascines?

A. No, sir; they were choked the same as the first ones I made.

Q. And trimmed like those you made?

A. They were not trimmed at all; the brush was cut down, and just put in the racks, and tied with string.

Q. And in executing your contract, you followed that as a standard?

A. Yes, sir; I had seen several contracts on the river, and thought that was the standard, and expected to do the work that way myself.

825 Now, some of these works were upon improvements that had been made under that contract of 1891, were they not?

A. Yes, sir.

Q. You were authorized to use the material that you found there, as I understand your contract?

A. I could not find any.

Q. You were authorized to?

A. Yes, sir.

Q. Did you find any?

A. I found very little. I worked in that vicinity not more than a week. It was very hard to get it, and I had to move farther down the river. I could not get any in that vicinity that would fill the specifications.

Q. Then you had to cut it?

A. Yes, sir.

Q. Did you get any out of the old works?

A. None whatever. I tore out the two dams, and there was not enough brush in the two to measure a quarter of a cubic yard; so little that Mr. Conant would not measure it at all.

Q. How far did you have to carry your stone, to execute the contract?

A. I carried it from three to six miles,—from three to five.

Q. How did you transport it?

A. On barges towed with a steam-boat; I floated it down the river, and towed it back.

Q. What was the name of the foreman that you had employed first?

A. Emory Sibley was the principal foreman. I had Stephen Hill, and the foreman in the brush camp was named Madison Carr,—the same man Mr. Gaynor had.

Q. Now, as to the range stakes, do you remember what your specifications required in the contract?

A. The specifications in regard to the range stakes.

826 It has been so long ago since I read the specifications that I have forgotten.

Q. Not the range stakes, but the supporting stakes through the fascines?

A. The pegs to be driven?

Q. Yes?

A. Required them to be three inches at the small end and six feet long.

Q. The specifications required that?

A. No, sir; the specifications said five feet or over.

Q. But you were required to furnish stakes six feet long?

A. Yes, sir; and, when they were not, Mr. Conant measured them, and rejected them.

Q. How close were the fascines packed in place?

A. In making the mat?

Q. Yes?

A. Packed as close as we could pack them with a lever.

Q. How could you drive such stakes as you have mentioned through the fascines?

A. It was very difficult; we would drive them down as best we could, and sometimes they would hit a rock or a piece of wood below, and we could not get them down. Many of them never got down to the full depth.

Q. How many did you use to a fascine?

A. I used four to a twelve foot fascine, and six to a twenty foot fascine.

Q. Those stakes were driven on the shore protection improvements?

A. On the shore protection and on the jetties also. The jetties were first built with mats, and we put loose fascines on top, and they were pinned with these pins; there were two pins on the mats, and four on the shore protection.

Q. Did you experience any delay in your work?

A. Yes, sir; a great deal.

Q. What caused the delay?

327 A. The delay was caused to a great extent by freshets. As every one familiar with the river swamp knows, after a freshet it is probably ten days when it is almost impossible to do anything in the swamp at all. It is muddy and boggy, and, while the water at the City gauge shows a lower height, it has frequently not gone out of the swamp, and fre-

quently Mr. Conant thought I should work when really the land was covered with water where the fascines grew.

Q. Then on a sunny day, notwithstanding that the water had gone down, it wasn't a good day to work under the contract?

A. No, sir; sometimes a week would elapse before you could get to them, and I have floated fascines out with bateaus to the river bank, in order to carry them up to the work.

Q. From the mattress camp where you made the fascines?

A. Yes, sir.

Q. You had to transport them with horses or mules?

A. I transported them with horses or mules except those I floated to the river bank, and from there were put on barges, and taken up the river in tow.

Q. How far did you have to transport them by wagon?

A. From a few hundred yards to two miles.

Q. How far by steam-boat?

A. From six to twenty-two or twenty-three miles.

Q. Do you remember, under the contract of 1891, where the brush was obtained for making the fascines?

A. Yes sir.

Q. Where?

A. From the same place I began to get the brush on Dunbar Lamar's place, principally, and got some from Mr. Hedge and some from a negro.

Q. There was plenty of brush there that you could have used to make your fascines had you been permitted?

828 A. Yes, sir; similar to that used heretofore.

Q. Similar to that used under the previous contract?

A. Yes, sir.

Q. Do you know whether that contract was let in the name of Gaynor, or did you simply infer that it was a Gaynor contract?

A. I simply inferred that it was a Gaynor contract.

Q. Why did you so infer? Who had charge of the contract?

A. Mr. Wheeler had charge of the contract.

Q. Who was Mr. Wheeler?

A. Foreman for Mr. Gaynor.

Q. At that point or other points?

A. He had been at other points, but at that time, he was at that point.

Q. He had been in the employment of the Gaynors, to your knowledge, before that time?

A. Yes, sir.

Q. Was he in his employment subsequent to that time?

A. I don't know, sir; I never have seen him since.

Q. You never have seen him since that time?

A. Yes; I saw him in Savannah on one occasion, but I don't know what became of him.

Q. While driving these stakes, did you encounter any accident with your fascines?

A. Yes, sir; in driving the stakes on the shore. We had to bind them first with wire a foot from the end, and then every two feet, and, in driving the pins down through them, they would sometimes hit the wire and burst the wire; that would not stand.

Q. What did you do them?

A. Had to take them up and rebind them, and put them back again or put others in their place.

Q. You could find no straight poles in the vicinity?

A. No. sir; none that Mr. Conant considered straight.

829 Q. How near could you find them?

A. I hauled poles all the way from five to twenty five miles; I don't think I got but very few nearer than five miles.

Q. Did you learn of any at any point distant that you could get?

A. Yes, sir; I told Mr. Conant that it was impossible to get the poles he required, and he said that Capt. Carter said when he came up from Savannah the other day, he saw plenty on cars at Millen, and I would have to get them.

Q. How far is Millen from the place where the work was?

A. About fifty miles.

Q. Now, in the work done previously, under the contract of 1891, did you see any stakes driven as you had driven them?

A. Yes, sir.

Q. How many to the fascine did you find in place?

A. Only one.

Q. Of what dimensions?

A. It was about fifteen inches long, not exceeding eighteen, —and about fifteen. We didn't have a rule to measure it at the time.

Q. Was it entire or had it rotted off at the time?

A. It was entire. Several of them in there at that time could be seen on the works.

Q. Those could hardly be called stakes?
A. They were about an inch and a half in diameter stripped.
Q. How did you pull them out?
A. They were a little rotten at the time, and, in order to get them out without breaking them, it was necessary,—the ground was soft,—with another stick, and we dug around it, and then pulled it out.
Q. Was it sharpened at the end?
A. I don't remember whether it was sharpened or just cut off.
Q. Try to remember what its appearance was after you got it out?
A. It was a split piece of wood about an inch and a
830 half in diameter As I remember, it was about one-quarter of a round piece. The piece had the appearance of having been split in two twice.
Q. Was it sharp enough at the point, as you saw it, to drive in still?
A. Yes, sir; at that point, it could have been driven in. Both end of it were of equal size.
Q. Was there life enough in it to show that it was in the same condition as when driven?
A. Yes, sir.
Q. You are willing to swear, then, that the peg that you drew out was as it was driven?
A. Yes, sir.
Q. And you finally pulled it out with your hands, you say?
A. Yes, sir.
Q. Were there any of your fascines rejected?
A. Yes, sir; very many of them.
Q. At what point?
A. At almost every point where they were carried on the river, and principally after we got to Augusta.
Q. For what reason?
A. If a fascine was six inches or so too short, it was rejected; if it was six inches or more too long, it had to be cut off. As the fascines were unloaded from the lighters, there was a sub-inspector by the name of George Bynum on the wharf, and we had to unload one fascine at a time to enable George to examine the wires, and, if a wire was loose, George would have that thrown aside, and we would bring the men up and rebind them before they could go into the works.

Q. Bring men up from where?
A. The brush camp.
Q. Five miles away?
A. I would let them stay until I got a good pile, and then bring the nearest men.
Q. And you had to cease work, to rebind these fascines?
831 A. No, sir; didn't cease work. Stopped the other work that the men were doing that we brought up to rebind them.
Q. But you lost the work of those men where the fascines were being constructed?
A. Yes, sir.
Q. How about rechoking at that point?
A. That is what I spoke of just now; that they were loose.
Q. Did you have to construct ways there?
A. Yes, sir; had to construct ways for the purpose of rechoking.
Q. When was the high water,—the great freshet or flood in the river?
A. in 1888.
Q. That was the last great freshet?
A. No, sir; we had a tolerably good freshet in 1890, I think on the 9th of March.
Q. Was there any freshet subsequent to the time of the execution of the contract of 1891?
A. Not to amount to anything.
Q. Was there any to cover the works put in under the contract of 1891 which you were repairing?
A. Any high water would cover them except the work up on the bank. The work up on the bank,—the shore protection,—has never been covered with water since it has been put in.
Q. It has never been covered by water yet?
A. No, sir; not the top end of them. I examined them a few days before I came down.
Q. You were unable to carry out the terms of the contract as to the time.
A. Yes, sir.
Q. What were the reasons that caused your delay?
A. In the first place, I didn't expect when the contract was made to be held down to the exact time. I knew I could not complete the contract in that length of time.
832 Q. There was nothing in the specifications about two months time?

A. I don't remember about the specifications. I know I had always been accustomed, in all work I had ever done, where the work got along allright—

Q. You entered into the contract, however, knowing its terms?

A. Yes, sir; I knew all the terms of the contract.

Q. And now, I have asked you as to the causes of your delay?

A. High water was a great cause, but the principal cause was the manner in which Mr. Conant acted towards the work.

Q. He was in charge of the work?

A. Yes, sir.

Q. In what particulars did his action delay you?

A. I was not allowed to do any work whatever unless Mr. Conant was present. If he would get down late in the morning, I would have my whole force waiting to sink the mats, and would have to wait until Mr. Conant arrived. If he wanted to get off in the afternoon, everything must stop until he got back the next day; that occurred frequently.

Q. How many times do you think that occurred?

A I could not state; as much as a half a dozen or more times.

Q. You asked for an extension?

A. Mr. Conant in sinking the mats would put the range stake on one side of the river, and he would sit on the other side, and I had to put the marker out on the end of the mat. He would sight them, and, as a mat went down, if it was more than six inches out of place, I would have to pull them up or pull them in place, and frequently there was so much rock on the mat, it was impossible to do it, and I would have to stop the work until the steamboat could come there and pull them in place. It probably had gone to the quarry, and I would have to wait until it got back to put them in place. And then Mr. Conant would not allow me to work on more than one 833 jetty at a time. I asked him frequently to allow me to put on more men and work on more, but he would not, and, in that way, my force was limited to a small number of men.

Q. How many bases of work were there?

A. Forty or fifty.

Q. And you were strictly limited to labor upon one at one time?

A. Yes, sir.

Q. Did Capt. Carter visit the work you were engaged upon frequently?

A. No, sir; not frequently. I think he did about three or four times, or two or three times.

Q. Did you see him there?

A. Yes, sir.

Q. He might have been there oftener?

A. Yes, sir; as much as two or three times; he might have come oftener. I don't know.

Q. You may have seen him three times?

A. May have seen him more. I saw him every time he came, but don't remember the number of times.

Q. Did you have any conversation with him in regard to the hardships you were experiencing?

A. I did.

Q. What complaints did you make?

A. After Capt. Carter came to the work,—I expected to see him at the hotel, and went to the hotel, but when I got to the hotel, he had left and gone to the Union Depot, and I went out to the Union Depot, where I found him, and I told him that it was a great hardship not to receive monthly payments; that I made my calculations on receiving monthly payments, to carry on the work, and he explained to me the terms of the contract, and stated that, unless certain progress was made, he could not make those payments. I had always considered him very friendly to me, he seemed to be, and
834 I asked him if there was no way to get around that. He said, "If you will write to the Secretary of War, or get your Congressman to do that, if he will advise it, I will be glad to do it."

Q. "If he will advise it"?

A. Yes, sir; or allow it,—something to that effect, but that was the sum and substance of it.

Q. (Handing witness paper) What is that?

A. That is a letter written by myself to Mr. Black October 25th, 1893 making the request.

Q. The letter or a copy of it?

A. Copy of the letter.

Q. Will you read it, and see if it is an accurate copy of what was contained in your letter?

A. Yes, sir; as well as I can remember, that is a copy of it.

Judge-Advocate: This is a copy of a letter written by Mr. Twiggs It is offered in evidence—

Mr. Blair: That is not the original; you don't think that is—

Judge-Advocate: Yes, sir; I will read it and put it upon the record. It was written at the suggestion of the accused, and I think it is admissible. All papers are required, as a rule, to go back to the Department, and the originals are in Washington. I would prefer them, but—

Mr. Blair: I have no objections.

Judge-Advocate: (Reading)

"A. J. Twiggs,
Consulting Engineer and General Contractor,
Augusta, Ga., October 25, 1893.

"Hon. J. C. C. Black,
House of Representatives,
Washington, D. C.

"Dear Sir:

"I wish to ask a favor of you if it will not give you too
835 much trouble. I have the contract for building the jetties in the Savannah River below Augusta. My contract requires that $10,000 worth of work shall be done per month. On account of the continued freshets and storms, I have been unable to accomplish this amount. There will be due me at the end of this month about $5,000. Capt. Carter says he can't pay me anything on the work unless the Secretary of War authorizes him to do so, and advised me to write to you and get you to see the Secretary and ask him to allow the payments; that he will recommend it if the matter is referred to him. He was here today and examined the work done. He says that it is entirely satisfactory and had no fault to find. I am doing the work for about half what has been paid for this work heretofore and have accomplished twice as much as has ever been done before for the same amount of money, but as you know the work cannot be carried on without money to meet expenses,—if the payments are made monthly, I will be able to finish the work in good shape and the Government will be benefitted as well as myself. If they are not, I am afraid I will be forced to give up the work, as you know my means are limited. It seem to me that it is to the interest of the Government to encourage a contractor who does satisfactory work at a smaller price than has ever been paid before. I would not trouble you, but this is a very important matter to me. It means all that I have in the world, and Captain Carter advised me to make this request of you, as the only means by which he could make any

payments. I hope this will not give you any trouble or inconvenience.

"I would not ask it if it could be avoided. I will be glad if you will attend to it at once,—as every day means much to me.

"With kind regards, etc.,

I am, yours very truly,

A. J. TWIGGS.

836 "Respectfully referred to the Secretary of War with the request that same be allowed.

J. C. C. BLACK."

And then there is simply a brief placed below. (Reading)

"Augusta, Ga., October 25, 1893.

"A. J. Twiggs, Contractor.

"Asks that Secretary of War authorize Capt. O. M. Carter to make monthly payments to him for work done on jetties in Savannah River, below that City"

"3rd indorsement.

Office Chief of Engineers, U. S. Army,

October 28, 1893.

"Respectfully referred to Capt. O. M. Carter, Corps of Engineers, for report.

"To be returned.

"By command of Brig. Gen. Casey:

"H. M. ADAMS,

"*Major, Corps of Engineers.*

"4th indorsement.

"United States Engineer Office,

"Savannah, Ga., October 30, 1893.

"Respectfully returned to the

"Chief of Engineers, U. S. A.,

"Washington, D. C.

"With the statement that Mr. Twiggs has been at work under his contract nearly three months and has not done in all that time as much work as the specifications require to be performed in 15 days. He was delayed about 14 days by high water. But the reason for the very unsatisfactory progress made is that he is not familiar with the work, has unskilled foremen, and an insufficient force of laborers. From present indications, he will not be able to complete the
837 work, if at all, for several months. This delay will cause the loss of the best working weather and may postpone the completion of the work until next summer.

"The terms of Mr. Twiggs' contract prohibit any payment

until all of the conditions of the contract have been complied with. The conditions of the contract not having been fulfilled no payments have been made, and Mr. Twiggs was informed that none could be made until the terms of the contract were carried out.

"He is in error in stating that I advised him to make a request that I be allowed to make payment and that I would recommend payment, or that I stated that the progress of the work to be satisfactory.

"I distinctly informed him that the progress of the work was very unsatisfactory and that I should make no payment unless the terms of the contract were changed, or unless I was ordered by superior authority to do so under the terms of the present contract.

"O. M. CARTER,
"*Capt., Corps of Eng. U. S. A.*"

Q. (Judge-Advocate continuing examination) Did you receive any money under the contract until after its completion?

A. None at all, sir.

Q. You had two delays, as I understand, of fourteen and sixteen days?

A. That was the amount allowed, yes, sir.

Q. Two extensions I should have said. And then you entered into a supplemental contract for the completion of the work?

A. Yes, sir.

Q. Mr. Conant still remained in charge of the work under the supplemental contract?

A. He did.

Q. What part were you allowed to take in the work being done?

838 A. I was allowed to continue to do what work I could. I had to give up a part of my plant to Mr. Conant in order for him to——

Q. What part of your plant did you give up?

A. One lighter and the use of the steamboat when they should require it.

Q. How much of a force of men did he employ?

A. That is hard to state; he employed everybody in the country that wanted work.

Q. How large a force? Can you estimate?

A. It would be hard to say. I would not be surprised if it did not reach one hundred men or more.

Q. It was the same class of labor that you had employed?
A. Some of it was, and some of the men I would not employ.
Q. I mean the same class of labor,—they received the same pay?
A. Yes, sir; the same pay.
Q. That walk in life; the same character of laborers, not as to the individual character of each laborer or as to the value of each one, but the same class?
A. Yes, sir.
Q. Under the terms of the contract, you were required, in the final adjustment of your contracts, to pay for such labor as he employed?
A. Yes, sir.
Q. What were you required to pay for the laborers employed in the manufacture of fascines?
A. Seventy-five cents.
Q. What had you been paying?
A. Seventy-five cents.
Q. What were you required to pay under the supplemental contract as expended for the same class of work?
A. From seventy-five to ninety cents.
Q. How do you make the distinction?
A. Some paid seventy-five, some eighty-five and some 839 ninety cents, and I think there was one man at $1.25.
Q. What was his employment?
A. I don't know that it was any more than any of the others, except that he was at work on one of the boats. I had hired the same man for seventy-five cents before he went with Mr. Conant.
Q. The same man you had been paying seventy-five cents?
A. Yes, sir.
Q. What other expenditures were made and charged to you?
A. He hired a horse from the stable whenever he so desired. I think that amounted to sixty or seventy-five dollars.
Q. That was charged to you in your final adjustment?
A. Yes, sir.
Q. How was it charged?
A. I don't know exactly how it was charged. I never had an itemized statement furnished me at all. Then on one occasion Mr. Conant broke a buggy at the wharf, and sent that to the black-smith shop and had it repaired, and charged that. His telegrams were charged, and his room rent at the

hotel, and offices expenses here at Savannah $450.00, or in that neighborhood, were charged.

Q. Office expenses in work on your contract?

A. Yes, sir.

Q. The supplemental contract that would be?

A. The supplemental contract or the principal contract, it don't appear which, but I remember something over four hundred dollars for office expenses.

Q. Was there anything constructed for use at your expense?

A. Yes, sir; one lighter.

Q. How much was the cost of that to you?

A. I have no idea. I never saw an itemized statement. Mr. Conant said the other day that it cost $400.00.

Q. It was turned over to you at the completion of the contract?

A. No, sir; it was brought to Savannah, and I wrote Capt. Carter several letters on the subject, and I think he re-
840 ferred the matter to the Secretary of War, or somebody, and he wrote me that he had received authority to turn it over to me.

Q. And was it turned over to you?

A. Yes, sir.

Q. What was its value when it was turned over to you?

A. Very little; it was a poorly constructed lighter and very small.

Q. How much could you get one constructed for like it?

A. That lighter contained about four thousand feet of lumber, $10.00; about $2.00 worth of nails, about $2.00 worth of caulking, and put the labor at $50.00; it would be about $90.00 for the lighter.

Q. Do you think you could construct one like it for one hundred dollars today?

A. Yes, sir.

Q. Of the same dimensions?

A. Yes, sir.

Q. And in fact, its counterpart?

A. Yes, sir; I have built a good many lighters.

Q. How many inspectors were used under the supplemental contract?

A. Five I think.

Q. At what rate of compensation, do you know?

A. I do not, sir.

Q. You don't know how it was charged, do you?

A. No, sir. In saying five inspectors, I included this man George Bynum, who Mr. Conant put to inspecting the fascines at the wharf. I think there were four white men.

Q. What was each inspector doing?

A. Well, Mr. Woolfin, I think, had charge; he and Mr. Ford were looking after the work Mr. Conant was having done.

Q. That is, they were foremen as well as inspectors?

A. They were in the capacity of foremen instead of inspectors. Mr. Hale was inspector on my work, and Mr. Conant overlooked him, and Conant and Bynum inspected the fascines,—went down the river occasionally where they were loaded on the lighters, and there was a man by the name
841 of Gardner. I don't know what he did. Every time I saw him, he was in the buggy with Mr. Conant; he was an assistant of some kind.

Q. Were you required to pay for his services?

A. Yes, sir.

Q. Do you know how much a day?

A. About two dollars a day, I think.

Q. Do you remember the total amount that was expended under the supplemental contract by Mr. Conant's directions?

A. Approximately, I do.

Q. Approximately, how much?

A. About seven thousand dollars,—a little over seven thousand dollars I think.

Q. Do you remember what your total account against the Government was under the contract?

A. I think it was about seventeen thousand dollars; somewhere in the neighborhood of seventeen thousand dollars,—that is, including Mr. Conant's work; my account outside of that was thirteen thousand dollars and something.

Q. That was for the jetty work?

A. Yes, sir.

Q. How much for the shore protection?

A. That is all the same, sir.

Q. Your total bill was $13,170.00?

A. Yes, sir; about thirteen thousand dollars, my recollection is.

Q. You paid about in the vicinity of $7,000?

A. $7,000, yes, sir.

Q. How much did you get for that work which you paid seven thousand dollars or more?

A. Less than four thousand dollars.

Q. You never have had an itemized statement sent to you?
A. No, sir. I have never seen one. I saw that (paper shown witness) paper I suppose, for that is my signa-
842 ture. I signed the voucher for it; that is all I have had.
Q. (Handing witness paper) That is your signature?
A. Yes, sir.
Judge-Advocate: We offer now in evidence the "voucher No. 50, month of February, 1894, Appropriation for Improving Savannah River; applied to that work between Augusta and Savannah. Accounts of O. M. Carter, Capt., Corps of Engineers. Pay to Albert J. Twiggs, etc., etc." A copy of this will be attached to the record marked Exhibit No. 65.
Q. (Examination continued) When the Government was carrying on a part of the work under that supplemental contract, do you know how much was paid for rock by Mr. Conant?
A. $1.50 a yard.
Q. Where delivered?
A. Delivered in the quarry.
Q. You own a quarry, do you not?
A. Yes, sir.
Q. Near to the quarry from which that stone was quarried?
A. About four or five hundred yards.
Q. As easy of access as the quarry from which the stone was taken?
A. Equally so.
Q. How much could you have supplied it for at the point where it was delivered?
A. Do you mean at the cost? I could have supplied it at my contract price.
Q. How much would it have cost you to deliver it?
A. Deliver it in the same place,—less than seventy-five cents.
Q. You made an effort to deliver it?
A. I made an effort; yes, sir.
Q. You asked to be permitted to furnish the stone?
A. Yes, sir; I did. I asked Mr. Conant and Capt. Carter also at the Planters Hotel.
Q. Your quarry could have furnished it?
843 A. Yes, sir; at any time. There was no time that it could not have furnished double the amount of stone necessary. I frequently had to take off the quarry force.

The stone accumulated so I had no place to put it, and, when I quit work, there was over 200 yards left.

Q. There was stone enough quarried to have done all this work?

A. No; not quarried, but it could have been.

Q. Do you know the condition of the other quarry?

A. Yes, sir.

Q. Had there been more stone quarried there than at yours?

A A good deal more; mine was a new quarry, just opened for this work.

Q. Was there as much stone that had been quarried and was on had for delivery at that time?

A. No, sir.

Q. That quarry had to be worked to get the stone and your quarry had the stone ready for delivery?

A. Yes, sir.

Q. How much?

A. I could not say; I would keep the force of hands necessary to have the stone ready all the time, and I would frequently take the hands away from the quarry, and work them elsewhere.

Q. And for seventy-five cents, you could have delivered it at the point where it was delivered?

A. Yes; I could have delivered it on the lighter.

Q. How much for lighterage to the point where it was to be used?

A. It would have been loaded, and the cost of the lighterage down was very little. There would have been some cost to tow the lighters back.

Q. And the cost of handling the stone?

A. Yes, sir.

Q. You can estimate that?

A. Mr. Conant loaded the stone himself; furnished the 844 wheel-barrows and the men to load it.

Q. But what I am trying to get at is what you could have done it for?

A. Counting the stone at 75c at that point of delivery,—the quarry—

Q. Then how much could you have got it to the point for where it was put in use and charged for at $1.74?

A. I could have gotten it for an actual cost of $1.00 put into the work.

Q. Had you been permitted, you could have saved that 74c?

A. Yes, sir; very easily.

Q. You are confident of that?

A. Yes, sir.

Q. You stated that you had a conversation with Capt. Carter and Mr. Conant about using this stone,—what was that conversation?

A. I told Mr. Conant first that I could furnish the stone, and he said, "Well, I will let you do it, and I will write to Capt. Carter about it," and two or three days elapsed, and he told me that Capt. Carter said it could not be used, and he would have to get it elsewhere. In the meantime, Capt. Carter came up, and Mr. Rees went to the Planters Hotel to see Capt. Carter at the time, and I met him there,—met Capt. Carter, and went to his room, and told him that I could furnish every bit of the stone without any trouble, and he told me he would look into the matter, and let me know later. He didn't say whether I could or could not, but I didn't hear anything more from him, and I didn't do it.

Q. Was any grading of banks done by you?

A. Yes, sir.

Q. Is that called for by the contract?

A. I think it is, sir.

Q. Was there any payment to be made for grading the banks?

A. None whatever. It was in the specification that no extra charge for the preparation of the bank will be allowed.

Q. How were you required to grade the bank?

845 A. I was required to grade the bank from the water to the top of the bank just as Mr. Conant saw fit to have it done.

Q. To what depth would you have to cut to grade?

A. It would be very great; in one instance, six feet.

Q. The previous work, had it been graded at all?

A. No, sir; it may have been levelled off a little, but showed no evidence of having been graded at all.

Q. Had it not been cut below the surrounding surface?

A. No, sir; not at all. In other words, it stands today like it was put in,—all extends above the surface.

Q. I show you a photograph which is known in this case as Exhibit No. 56; what is that?

A. That is the top end of a shore protection built by Mr. Gaynor, or Mr. Wheeler for Mr. Gaynor.

Q. Do you recognize it?
A. Yes, sir.
Q. What is that covered with?
A. That is covered with brick-bats.
Q. You have seen it within a recent period?
A. Yes, sir.
Q. You have seen it; do you know when it was put on?
A. It was put on sometime during the,—I cannot say exactly when,—but during Mr. Gaynor's contract.
Q. The contract of 1891?
A. I don't remember whether in 1891 or the one previous.
Q. Do you remember the date of the one previous?
A. Two years before that.
Q. Was that covered by the great freshet of 1889? It was in 1889, I believe you said?
A. 1888; yes, sir.
Q. Then it had not been constructed in 1888?
A. It hadn't been constructed in 1888.
846 Q. Was it covered by the freshet of 1890?
A. In 1890 it would have been covered if there—I think that protection was built under the last contract; it is possible that it might have been built under the one previous.
Q. Would there not be the same evidence of the previous freshet about it?
A. Yes, sir; there is no mud on the rock and none settled on the brick.
Q. Do you remember when you first saw the brick on that place?
A. I saw them hauled there.
Q. By whom?
A. By wagons owned by Joe Murray.
Q At the time the improvements were going on under the contract for the Government?
A. Yes, sir; they were hauled from a brick-yard on the Port Royal Road known as Bassford's Brick Yard.
Q. I hand you a photograph known as Exhibit No. 57; what is that?
A. That is a jetty on the bar at Sand Bar Ferry built by Mr. Gaynor.
Q. That was built under the contract of 1891?
A. I think it was. There are only two jetties remaining now of Gaynor's that have not been repaired, and that is one of them.
Q. That is in that condition at present?

A. Yes, sir.
Q. When was this photograph taken?
Mr. Rose: Was he present?
A. I was present when it was taken. It was taken Nov. 22nd.
Q. That is your writing?
A. No, sir; my son's writing.
Q. Did you find any indications of brush left there in the fascines?
A. No, sir; none whatever. In one of them, there are evidences of a few poles the fascines were tied to, but no other indications of brush at all on either of them.
Q. When was that taken? I think I have asked you that.
847 A. 1897.
Q. You were present when these were taken?
A. Yes, sir.
Q. Were these all taken at one date,—all these pictures?
A. Yes, sir; all within a few hours of each other.
Q I hand you exhibit No. 58; what is that?
A. That is the other jetty I referred to,—the pieces I referred to as being shown in the photograph. Here is one, and right in the end there (indicating) are two more, as they show on the work
Q. That is all the brush you could find?
A. Yes, sir.
Q. Did you find any pegs there?
A. No, sir; no pegs at all.
Q. I hand you Exhibit No. 59; what is that?
A. That is a spur dam on the Georgia side just above Kirkpatrick Bar.
Q. That is your work?
A. Yes, sir.
Q. When was that put in?
A. In 1893.
Q. And this photograph was taken, as you say, in November, 1897?
A. 1897; yes, sir.
Q. Four years after the completion of the work?
A. Yes, sir.
Q. I hand you Exhibit No. 60; what is that?
A. That is a shore protection farther up the river, probably a quarter of a mile.
Q. Constructed by you under the same contract?

A. Yes, sir.
Q. In 1893?
A. Yes, sir.
Q. Photographed in Nov., 1897?
A. Yes, sir.

848 Q. I hand you exhibit No. 61; what is that?
A. That is a photograph of a jetty built by Mr. Gaynor and extended about one hundred feet by me, I think, and repairs were put on top of it from the shore out to the end.
Q. And that is as you left it?
A. As I left it.
Q. That was under the same contract,—1893?
A. Yes, sir.
Q. I think you have had no other contract since?
A. No, sir; I have done no work down on the River since.
Q. And it was taken in November, 1897?
A. Yes, sir.
Q. I hand you Exhibit No. 62; what is that?
A. That is a spur dam just above, the first one above my dam that you showed me,—on the Georgia side.
Q. That is your work?
A. Yes sir; that was meant particularly to show the shore protection. The light was bad when it was taken. The rock comes up there, and on top of the hill, does not show in the photograph.
Q. It becomes a shadow there in the likeness?
A. Yes, sir.
Q. I hand you now Exhibit No. 63; what is that?
A. That is a jetty too, or rather a shore protection on top of the hill next to these brick; it is the nearest one to it.
Q. Do you see the stakes there that were driven under your contract?
A. Yes, sir.
Q. Many of them?
A. There are probably a dozen left that were not knocked down.
Q. Are there any stumps of trees left there?
A. No stumps; only the trees that grow there.
Q. I mean thos that are cut off here (indicating)?

849 A. No, sir; they are all stakes, and show where they have been driven with a maul. I placed my hat there when it was taken, so you could compare, to show the size of the stakes.
Q. An ordinary size hat?

A. The same hat I am wearing today.

Q. For the purpose of comparison, to show the size of the stakes?

A. Yes, sir.

Q. In that first Exhibit I showed you; you said you saw brick-bats being hauled there by Joe Murray,—who is Joe Murray?

A. A man who owned teams and hired them.

Q. Do you know who he was employed by?

A. By the Gaynors' firm.

Q. Employed to carry those brick-bats?

A. Yes, sir.

Q. You said you went into partnership with Mr. Gaynor in the contract of 1891, by which you were to have the rock part of that contract and $500.00 additional; did you carry that contract out?

A. I did so far as I was allowed to. I didn't get any of the rock at all.

Q. You were simply willing to carry it out?

A. Willing to carry it out; I carried my machinery to the quarry preparatory to beginning work.

Q. Why didn't you carry it out?

A. Mr. Wheeler, who was in charge, told me that Mr. Gaynor had said nothing at all to him about it, and he didn't know me in the business; that he was going to do the work himself, and that I had better write Mr. Gaynor. I wrote Mr. Gaynor several times, and never got a reply from him. In the meantime, Mr. Wheeler went on with the work.

Q. Did you get any compensation for what you did do?

A. Yes, sir.

Q. From whom?

A. From Mr. Wheeler through Maj. W. T. Gary, his attorney in Augusta.

850 Q. As a result of legal proceedings?

A. Yes, sir.

Q. Instituted by yourself?

A. Yes, sir; he compromised the matter.

Q. You have testified that you saw the fascines used under the contract of 1891, and also as to the construction of those used under your contract?

A. Yes, sir.

Q. Did you see them made into mattresses at each place?

A. Yes, sir.

Q. How differently were they made, if they were differ-

ently made, when put into the mattresses,—how differently were the mattresses constructed?

A. Mr. Gaynor's mattresses were constructed two or three different ways according to the depth of the water he put them in. If the water was very deep, he would put about four poles or six poles to the mat, to hold them together, two on one end and two on the other end and two on the sides, and usually two poles were laid flat on the lighter,—he had no ways to build them on,— and the fascines were laid on top of them and bound with string; sometimes a second pole was put on top, and the two poles were bound together.

Q. Did you ever see any wire used there?

A. None at all. I didn't know that wire was to be used in the construction of mats from what I saw there.

Q. Did you ever see anything different used for tying fascines together than that you used in the first fascines constructed by you?

A. No, sir; except in thos constructed by me, I never saw anything but lath-yarn.

Q. How did you construct your mattresses?

A. The poles had to be the full length of the square of the mat, whatever it happened to be, except in case of the
851 32 mats, when the poles had to be 32 feet long one way, but were allowed to be pieced the other. I had to make ways on the lighter and on the wharf, to build the mats on, and slide them in the water. The poles were first put down, and in squares of four feet a second row of poles crossed them; they were wired together, and the first fascines placed on the poles and wired to the poles. The other fascines were crowded against them until we got on half a dozen, and then we used the lever to push them down as tight as possible until the mat was finished. Then a second row of poles was put on, and wired through to the bottom. A man got underneath the fascines and we had to make a hole through them the best way we could, and we had an iron hook that we ran through there and caught the bottom pole with the hook,—then the lever was hooked into a pole which was run through the top of this hook, and two men would get on it, and press the fascines as close as possible, and then they were wired, and on top of this was a second row of poles wired again with double wires, so as to make two ties at every point.

Q. Those fascines constructed in that way were, of course, much heavier than those you had constructed before Capt. Carter reached the camp?

A. Yes, sir.

Q. How many of those could you transport in a wagon at one time?

A. It depends upon the weather. After a freshet, when the ground was soft, I could not sometimes put over four on a two horse team. Sometimes I would have to have two extra mules to haul them, and four or five was a good load for four mules. Then again, when the road was good, we could sometimes put on six.

Q. Now, the amount of labor that you yourself performed on that contract, did the amount you received for it come within your expenditures?

A. Very nearly.

Q. It didn't prove a loss to you?

852 A. But very little, if any.

Q. How did you come out on the part that was done for you by the Government under Mr. Conant?

A. Something over three thousand dollars loss; about three thousand I think.

Q. How much did you lose on the whole contract?

A. I lost between three and four thousand dollars; I don't remember exactly.

Cross-Examination by Mr. Blair.

Q. What kin are you to John D. Twiggs, Jr.?

A. He is my son.

Q. Did he take those photographs?

A. Yes, sir.

Q. What kin are you to Marion Twiggs, of Augusta?

A. He is my youngest brother.

Q. What kin are you to Paul E. Twiggs?

A. He is my first cousin.

Q. How did you happen to be with your son when these photographs were taken?

A. I took him down there for the purpose of taking them.

Q. At whose suggestion?

A. My own suggestion.

Q. Just out amusing yourself taking photographs?

A. No, sir.

Q. Who asked you to have them taken?

A. I asked myself.

Q. Did you expect to sell them or what?

A. No, sir; I did not. Capt. Gillette tried to get a pho-

tograph and his camera failed; something was the matter with it, and it would not work, and I think I told him that I had a son who had a camera and was tolerably expert in the business, and I would have him to take some, and send them down to him.

853 Q. And he acquiesced in that?

A. Yes, sir.

Q. You volunteered to Capt. Gillette to take these photographs?

A. Yes, sir.

Q. And who selected the sites and places to photograph?

A. I did myself.

Q. You picked them out?

A. Yes, sir. I picked out Mr. Gaynor's because they were the only ones left.

Q. In the 1891 contract, you say you made an agreement with Mr. Gaynor to do the stone work?

A. To get out the stone.

Q. And he gave you five hundred dollars in addition?

A. Yes, sir.

Q. And you then agreed not to put in your bid?

A. I did.

Q. You had your bid all prepared; you were going to put in a bid?

A. Yes, sir.

Q. Told Gaynor you were?

A. Yes, sir.

Q. And then in consideration of five hundred dollars and the stone contract, you didn't put it in?

A. I did not; no, sir.

Q. You say that in 1893 Gaynor became very wicked, or implied that, and offered you one thousand dollars, and you indignantly rejected that?

A. I didn't say indignantly.

Q. You said the Gaynors did not have money enough to keep you from putting in a bid?

A. Yes, sir; I said that.

Q. It was an awful bad thing in 1893 for anybody to offer you money not to bid?

A. Not any worse than any other time, I suppose.

854 Q. Not any worse than it was in 1891, was it?

A. No, sir.

Q. What occasioned your change of heart between 1891 and 1893?

A. No change of heart or anything else.

Q. But you were indignant in 1893, were you not, when he offered to buy your bid?

A. Yes.

Q. But you were not indignant in 1891?

A. I didn't consider it buying in 1891. I considered that I had an interest in the contract with him, and he had deceived me in that one, and I had reason to believe he would do it again.

Q. You said just now that you cut part of those fascines a hundred to a hundred and twenty-five, that you built immediately after the second day of August, when Capt. Carter came up there?

A. Prior to the 2nd of August.

Q. You cut them all apart?

A. Yes, sir.

Q. And not one went into the work?

A. Not a single, solitary one.

Q. How many were there?

A. I didn't count them; judging from the pile, there was over one hundred.

Q. Suppose Mr. Conant testified here that about seventy fascines that you had constructed after that did go into the work?

A. It doesn't make any difference if an angel testified it, my statement is the fact.

Q. It depends upon the angel?

A. No.

Q. So Mr. Conant is wrong in that, is he?

A. He certainly is.

Q. You say you got Mr. Gaynor's foreman, Madison Cobb?

A. Yes, sir.

Q. Was he an expert man in the making of fascines?

855 A. I consider him such.

Q. You got him for that?

A. Yes, sir.

Q. And he knew all about how the fascines were made when Mr. Gaynor was doing the work under the 1891 contract?

A. Yes, sir.

Q. Suppose Mr. Conant should say that he never had any experience whatever in fascine or mattress work, what would you say to that?

A. Say it wasn't true.

Q. Suppose he reported to Capt. Carter, "I find that Mr. Twiggs' foreman on the works had never seen a mattress, and knew nothing of jetty work"?

A. That referred to Sibley, and not the man in the mattress camp, in the fascine camp.

Q. Suppose he made such a statement as that about Sibley, would it be true or not?

A. Sibley had never seen the work done prior to that, but I had, and I thought Mr. Sibley had ordinary intelligence, and I had intelligence enough to show him. I never failed to instruct a foreman before.

Q. Suppose Mr. Conant testified here that he only required you to drive two stakes on a twelve foot and four on a twenty foot fascine, what would you say to that?

A. I would say he had forgotten what he did do.

Q. Suppose Mr. Conant had testified that he paid that quarryman, Reese, $1.00 a yard for stone on the barge, what would you say about that?

A. I would say that Mr. Conant is mistaken again, because I saw Mr. Conant's men loading the barges, and he bought the wheel-barrows, and charged the wheel-barrows to me, to load it with.

Q. Did you ever seen his account?

A. I never had a detailed statement, but he paid
856 these men by the day, and his men loaded them; the rest of the men didn't touch them.

Q. How do you know Mr. Reese didn't pay the men?

A. Because he told me he didn't.

Q. That is your only reason?

A. Yes, sir.

Q. You say that the man Murray who was employed by Mr. Gaynor, threw the bricks on that work?

A. I say he hired the teams to do it; Murray's teams did the hauling.

Q. Murray's teams did the hauling?

A. Yes, sir.

Q. That threw those bricks on that shore protection?

A. Yes, sir.

Q. And you say Mr. Gaynor's foreman employed Murray?

A. Yes, sir.

Q. How do you know that?

A. Because I saw Gaynor's foreman and men placing the brick where he threw them on there, while I don't know abso-

lutely that he employed him; somebody else might have employed him.

Q. You never heard the contract of employment made?

A. No, sir.

Q. Never saw any money pass?

A. No, sir.

Q. Just because the brick were thrown on there, and you saw some men who worked for Mr. Gaynor distributing them, you make the assertion that Gaynor employed that man to haul the brick?

A. That was the natural inference from that.

Q. You don't make it from any other fact?

A. No, sir.

Q. When were you paid for your work?

A. After the work was completed.

Q. What month?

857 A. The voucher shows in February, I think.

Q. Your receipt is dated the 21st day of February, 1894,—is that correct?

A. I suppose it is.

Q. Do you know whether it is correct or not?

A. The records are more correct than my memory; that is my signature.

Q. Now, do you know, as a matter of fact, that you were paid in February, 1894?

A. I remember that I was paid the day I signed that voucher.

Q. Do you remember whether that was in February or March?

A. From the date of the voucher, I would say it was in February?

Q. You are sure it was not in March?

A. If it was, it seems to me that the voucher ought to be dated that way.

Q. Did you ever tell anybody in Augusta early in April that the Government had not paid you a dollar?

A. No, sir.

Q. Did you ever tell a man by the name of Browton, in the employ of the Augusta Hardware Co., between the first and the eighteenth day of April, that the Government had not paid you a dollar on that contract of 1894?

A. I don't know a man by the name of Browton.

Q. Do you know a man in the Augusta Hardware Co.?

A. Yes, sir.

Q. Do you know a man by the name of John Broughton?
A. No, sir.
Q. Do you know anybody concerned in the Augusta Hardware Co.?
A. Yes, sir.
Q. You know the corporation,—you know that there is such a company?
A. Not now; there was such a corporation or company.
Q. There was in 1894?
858 A. Yes, sir.
Q. Did you know anybody connected with that company in 1894?
A. Yes, sir.
Q. Did you ever say to anybody connected with that Company, in the month of April, 1894, that you hadn't been paid one dollar by the Government on this contract?
A. No, sir; I did not. I said this. I remember probably what you are driving at. I said that I hadn't made a dollar; that the Government put hands on at my expense, and expended everything that I had earned. I didn't say that I hadn't been paid a dollar I said, instead of making anything, I had lost all I put into it.
Q. You didn't say that you hadn't yet received a dollar for the work done?
A. No, sir.
Q. Therefore you were unable to pay.
A. No, sir; I said I hadn't made any. I borrowed money from the bank in Augusta—
Q. Never mind that. I want an answer to my question. You didn't say that?
A. No, sir; I did not say that.
Q. You said Lamar gave you the brush you put into those fascines?
A. Yes, sir; everybody did; I didn't pay out a nickel for it.
Q. You didn't promise to pay a dollar to anybody for the brush?
A. No, sir.
Q. A free gift was it?
A. Yes, sir.
Q. Mr. Conant testified that the material out of which you made the fascines was hauled only a distance of five or six miles; you said just now that some of it was hauled as far as twenty miles?
A. Yes, sir; some of it over twenty.

Q. So if Mr. Conant made that statement, it is not correct?

859 A. It is not correct.

Q. Mr. Conant must be a pretty bad man?

A. I thought he was when he inspected my work.

Q. You say you could have put that stone in the work for one dollar a yard?

A. At an actual cost of one dollar, yes, sir.

Q. You expected to make the seventy-four per cent out of the Government?

A. I did.

Q. You didn't have any agreement to divide that with anybody?

A. No agreement at all to divide it.

Q. Going to keep that yourself?

A. Exactly, sir.

Q. You had a difficulty with Mr. Conant up there, didn't you?

A. I did.

Q. And your difficulties finally culminated in an encounter?

A. I slapped his face, and he ran; that was all the encounter there was.

Q. Some people would call that an encounter?

A. I didn't call it much.

Q. It wasn't much for you you mean?

A. No, sir.

Q. Didn't you report to Capt. Carter that Mr. Conant was armed,—that he had a pistol or something?

A. Yes, sir; I have that letter, if you want it; I wrote Capt. Carter

Q. Was it true that Mr. Conant had a pistol?

A. I thought so; he always carried one. I didn't see it, but the manner in which he acted after I struck him, led me to believe he did.

Q. Did he try to draw it?

A. I thought he did, and I rushed on him, and that time I was going to do him up sure enough, but he out ran me.

Q. Did Capt. Carter ever tell you that Mr. Conant

860 reported that he did not have a pistol at that time?

A. Yes, sir.

Q. What did you say to that?

A. I told him it might have been true and might not. I frequently saw him with a pistol, and he told me he carried it,

and from the movements he made, I expected him to draw his pistol.

Q. Now about the buggy,—you say that Mr. Conant hired a buggy, and charged it up to you?

A. Yes, sir.

Q. Whose buggy?

A. Mr. Geo. H. Hernigans.

Q. That wasn't in the voucher you signed?

A. It wasn't put down as one of the items.

Q. But whose buggy did he have repaired?

A. Mr. Geo. H. Khernigan's. A man by the name of W. R. Stafford, near the City wharf, repaired it.

Q. Did you ever ask for an itemized statement about this buggy, or any other repairs,—about the buggy that was hired and the buggy that was repaired?

A. No; I said I would like to get an itemized statement of the full account, and that voucher you see is the only one I got.

Q. Then you don't know positively that he charged the buggy hire to you?

A. Yes, sir.

Q. How do you know that?

A. He Conant, told me so.

Q. When?

A. Told me it was being done. Prior to the time that the Government took charge, I loaned Mr. Conant a buggy whenever he wanted one, and I offered him the same buggy to use, to reduce expenses, and he would not accept it. He said he had authority to hire one, and that he would hire it from the livery stable.

861 Q. Where did this conversation take place?

A. On the wharf somewhere; I don't remember the exact spot.

Q. About the day?

A. About the date he was putting on that force.

Q. After the supplemental contract was made?

A. Yes, sir.

Q. Was anybody else present at that time?

A. I don't remember whether there was or not.

Q How do you know the room rent was charged to you?

A. I don't know that the room rent was charged to me except what Mr. Conant told me.

Q. When did he tell you that?

A. He told me that all the expenses were charged to me,

and he was allowed so much for office rent, and he put in his room, and I went to the Hotel after that, and the Clerk told me he made out his vouchers.

Q. You didn't see the vouchers?

A. No, sir.

Member of the Court: I move that we adjourn until tomorrow morning.

The Court: What hour shall we adjourn to?

Judge-Advocate: Until eleven o'clock, if you please.

The Court: If there are no objections, the Court stands adjourned until tomorrow morning at eleven o'clock a. m.

(At 3.00 o'clock p. m. Court adjourned.)

THOMAS F. BARR
Col. & Asst. Judge Adv. Genl.
Judge Advocate

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United States Court Room,
Savannah, Georgia,
February 1st, 1898.

The Court met pursuant to adjournment at eleven o'clock, A. M. this morning.

Present:

All the members of the Court and the Judge Advocate. The accused, his counsel, and the reporter, G. T. Cann, were also present.

President: The Court will come to order. All are present.

Judge Advocate: (Having called Mr. A. J. Twiggs to the stand) You are still under oath Mr. Twiggs, you will remember.

Mr. Twiggs: Yes, sir.

ALBERT J. TWIGGS, a witness for the prosecution, having been previously duly sworn, testified as follows:

Cross-Examination (Continued)

Questions by Mr. Blair.

Q. Mr. Twiggs, suppose it had been stated by Mr. Conant that he urged you from time to time to increase your force

and you promised to do it, what would you have to say to that?

A. I would have to say this sir; that he did tell me that I could work more men, and I asked him where and he said why I could put one hundred men on this jetty, from one end to the other, I thought there was not room for them and I thought my judgment was better than his.

Q. He only permitted you to work on one jetty at a time?

A. Yes, sir, only one, and he said I could work one hundred men on the jetty in a space of one hundred feet.

Q. Did you ever admit that Mr. Conant's foreman did more work with the same number of men than your foreman did?

863 A. No sir.

Q. Suppose Mr. Conant said that you had admitted that?

A. I should say it was untrue, sir.

Q. Did you ever try to hinder and delay Mr. Conant in his work?

A. Never, sir. On the contrary I always quit my work to accommodate him. It was frequently the case that I had to stop work with the steamboat and turn the boat over to him.

Q. Did you ever hamper him and make excuses for not turning over the steamboat?

A. No sir, I never did. The steamboat was always turned over when it appeared. Some times it was down the river and we would have to wait until it could come.

Q. Then if Mr. Conant should say that you did hamper him by not bringing the steamboat up promptly, and by interposing captious delays on him, what would you say about that?

A. I should say it was untrue, sir.

Q. Did you ever tell Mr. Conant on Monday or Tuesday that a certain Mr. Evans, a hardware merchant or wire merchant, in Augusta, would not have any wire until Friday, in order to delay Mr. Conant in his work?

A. No, sir, I dont remember any such conversation. I might have told him that he told me that he would not have it until such a day, but it was not for the purpose of delaying him.

Q. Did you ever go down below your own farm and get material?

A. Yes, sir, ten miles below. I got a great deal, the most I got was below my place.

Re-direct Examination.

Questions by the Judge Advocate.

Q. Mr. Twiggs, any hampering of Mr. Conant in his work and delay, would have added to your loss would not it?

A. It would sir, I realized that.

Q. It was to your interest not only that his work but your own should be expedited?

864 A. Exactly, sir.

Q. You were asked as to a statement, as to whether you made a statement at a certain place in Augusta, that you had not been paid under your contract,—did you make that statement in those words?

A. I did not, sir.

Q. Do you recall the conversation?

A. Yes, sir.

Q. Please narrate to the Court the exact conversation as you recall it?

A. I said that I had received nothing whatever from the contract, that the checks that I received was a little less—or rather, the account that I had at the bank, that I turned it over to, and that I didn't get one dollar from it.

Cross-Examination.

Questions by Mr. Blair.

Q. What bank was this note owing to?

A. It was not a note, I owed some notes, but I had a certain line of credit with a bank and had overchecked the account; I would check until it ran up to a certain amount and then give notes for that amount. It was Fleming Thomas & Co.

Q. Where, in Augusta?

A. In Augusta, yes, sir.

Q. About how much was this open account, the aggregate of this open account and those notes at the date, Feb. 21, when you received the check from the Government?

A. I could not tell you the exact amount, but it was more than the check.

Q. And did you indorse the check over to Fleming & Thomas?

A. I don't know whether I did or not, I must have done it if I had put it in the bank for collection.

865 Q. Did you put it in there, the check?

A. I think I did, that is my usual custom.

Q. That is a large check, you ought to remember where you put it.

A. I would not have put it anywhere else.

Q. Have you any distinct recollection upon it?

A. Not more than my general business habits.

Q. Did you state positively just now you turned it over to them?

A. Yes, sir, as I would any other business paper.

Q. And that there was not a dollar coming out of it to you?

A. Yes, sir.

Q. Who was this man of the Augusta Hardware Company that you made this statement to?

A. Mr. Dougherty.

Q. What is his first name?

A. John Bones Dougherty.

Q. Where was the statement made?

A. In his store in Augusta, the Augusta Hardware Company's store.

Q. About when?

A. About the time he wrote that letter to Capt. Carter, I suppose.

Q. Have you any recollection about it?

A. I could not say the date, no sir.

Q. Do you know who else was present?

A. I don't think there was any one else present that I remember.

Q. What part of the store did the conversation occur in?

A. Well, I could not say that; the store is about 300 feet long, I was all over it, attending to my business with him, and I could not tell which side it was.

Q. Is the man dead?

A. I don't know sir, I have not heard of him in several years; he left Augusta.

Q. What was he in the firm?

A. I think he was—he was the firm,—I think.

866 Well, it was a corporation, was not it?

A. Yes, sir, it was a corporation in name, I think Mr. Dougherty and his wife probably own the whole thing.

Q. Was he president or vicepresident or general manager, if you know?

A. I don't know sir, positively.

Q. Do you know where he is now?

A. I don't know, sir.

Q. Was he the managing man of the concern?

A. He was, sir, the only other two men in the concern that I knew of at the time was a man by the name of Hill, who was the book-keeper, and John Bones, if I remember correctly; there may have been another one; I have been trying to remember, I don't think that there were any others there.

Re-direct Examination.

Questions by the Judge-Advocate.

Q. I would like to have you recall that interview and state as fully as you can the exact conversation; you were in debt to this person, were you not?

A. Yes, sir.

Q. There was a question of your ability to pay?

A. There was, yes, sir.

Q. Now narrate as fully as you can the exact language that was used.

A. It is a very hard matter to do that; it all was long ago and I never expected to hear of it again. I can relate the substance.

Q. Give as near as you can?

A. Some time after winding up the matter, George asked for a payment of his account; I told him he would have to wait some time, that the Government work had been finished, but I didn't get one dollar out of it, but I had to pay the
867 bank and he would have to wait until I could do some other work, that I had lost all the cash I had myself, or owned, and therefore, was unable to pay it.

Re-Cross Examination.

Questions by Mr. Blair.

Q. Have you paid it yet?

A. I don't know, the thing went into the hands of a receiver.

Q. You don't know whether you have paid it yet or not?

A. No, sir, I think I have; I may not; I lost a good deal of money about that time. Some accounts have been paid and some have not.

ELBRIDGE R. CONANT, recalled as a witness by the Court, having been previously duly sworn, testified as follows:

The President: The reporter will repeat the question of yesterday.

Reporter, reading: I would like to ask the question, taking the average character of the seven course mattresses that were built at Cumberland Sound in 1894; I would like the witness to tell me how much material in brush and binder poles there was to one square yard of that jetty or mattress; after allowing for the compression of the seven courses of fascines by the weight of the 18 inches of stone, and allowing also the proper proportion in volume of binder poles; I would like that in cubic yards; and taking the contract price at 57 cents a square yard for single mattresses, I would like to know what they cost the Government per cubic yard and per cord?

A. I have estimated the cost of brush per cubic yard at $2.45, by the cord, $11.50, and the poles one cubic yard, $2.44, and by the cord, $11.46.

The President: Is that sufficient answer?

868 By the Court: Well, now, in one square yard of the jetty, how much of that material was there, that's the question. To every square yard of jetty, seven courses high, how many cubic yards, or in cubic yards, how much material was there?

A. There was 1.4 cubic yards of brush, and .23 cubic yards of poles per square yard.

By the Court: 1.63 altogether?

A. .23 of poles and 1.4 of brush.

By the Court: That makes 1.63 altogether. How much depression was there due to the weight of stone?

A. I consider the depression from 10 feet and a half to seven feet, one foot per course.

By the Court: How many grillage poles were there between two consecutive courses of fascines?

A. I made 16 courses for the seven, 16 grillages for the seven courses, a double grillage on the bottom and a double grillage on top of the first, and then between each consecutive course, a double grillage with poles.

By the Court: What do you mean by a double grillage of poles, how high was that grillage, what is the distance from the top of one layer of fascines to the bottom of the fascine

next above, that vacant chamber formed by the grillage, that vacant chamber, how high was it?

A. That would be about 8 inches, 8 or 9 inches; that is between the first, where there were double grillages of poles, between every course after the first there would be the same, there would be two layers of poles.

By the Court: Do you know what the price of fire wood per cord was at that time at Fernandina?

A. I cannot give it exactly, but I believe it was $2 or $2.50, that is an estimate of mine; it was about $2 or $2.50 in that vicinity.

869 By the Court: From your knowledge of the locality, can you tell me what there was in the local conditions that affected the cutting and gathering of that brush and transporting it to the jetty, and putting it in that jetty that made it cost the United States so much in comparison with a cord of wood? by a cord of wood you understand I mean 128 cubic feet, do you not?

A. Yes, sir.

By the Court: That is between 11 and 12 dollars for brush, and how much did you say for the wood?

A. I estimate between $2 and $2.50 per cord; I may be mistaken. I cannot see why that would cost proportionately four or five times more.

By the Court: I wish you would consider that very carefully and tell me what there was in the local conditions, why it should cost so much more to get a cord of brush, to cut it, to gather it, to bind it into bundles and fascines, transport it to the jetty and put it in there, why it should cost so much more than the market price of a cord of ordinary fire wood.

A. I can state the instances, some of the instances which arose.—with the brush in putting it in, but I cannot see where such great difference should be; there should not be such great difference between good cord wood and good brush. That leaves a very large margin, a very large profit in getting the brush and the mattresses. There is the making of it and the hauling of the fascines to where the mats are made, and the towage out, the sinking and the elements of the weather, some days, of course, there could be nothing done, but there would be the same conditions arising, even if it was wood taken to the same locality.

870 By the Court: Was the brush much scattered so that the parties had to range over a large tract to gather it?

A. To a certain extent that would be true.

By the Court: Was that the fact?

A. Yes, sir, it was scattered over a considerable extent, though I should think within a radius of 2 or 3 miles for that contract.

By the Court: Was it more scattered than a growth of timber from which fire wood would be cut?

A. No, sir, I do not consider so, except that the timber would have to be conveyed from a longer distance; there was no timber immediately on the island to be used.

By the Court: Was it difficult brush to handle, was it thorny and rough so it would tear the men's hands and tear their clothes and take time or bothersome to handle to tie up, that would cost something?

A. Most of that was;—done; I should think it was pretty rough brush.

By the Court: What kind of brush was it?

A. Mostly scrub oak.

By the Court: What we call "black cat"?

A. I am not acquainted with that name; some myrtle and some bay.

By the Court: In the transportation, in putting it in the jetty, was the position exposed, was it so difficult and exposed?

A. Yes, sir, it is a very dangerous locality, Cumberland Sound.

By the Court: You said the other day it was not so much exposed as to cause the destruction of mattresses, if they were put in seven feet high?

A. Because the mattresses are not brought up above mean low water where the mats are sunk in deep water, there is not that limit; on the shoal work they were brought up to mean low water, but the sand would silt in so as to make
871 the binder tighter and tighter.

By the Court: Were any lost in sinking and getting them in place?

A. Yes, sir.

By the Court: How frequently?

A. I recollect three or four; there might have been not more than half a dozen, I can recollect three or four; there might have been several more than that.

By the Court: When the mattresses were on the scow, ready to put in place, was there much time lost in smooth water by waiting for the tide to sink them?

A. Yes, sir, they always had to wait for a certain per centage of tide to put them in place.

By the Court: Was much time lost, or was it so managed as not to lose much time?

A. Well managed, I considered. There could not be but one sunk a day, and then if the water was rough, there could not be any sunk that day; it might be a week before any was sunk.

By the Court: Taking all those losses into consideration, can you find any reason for this wide disparity between the cost of brush and the cost of cord wood?

A. No, sir, I cannot.

By the Court: I think you testified the other day that twice as much brush ought to have gone into the fascines, is that right?

A. I believe that was my statement, not perhaps twice; I think I gave rather a different proportion. Didn't I say about 20 per cent?

By the Court: I think you said the fascines actually used at Cumberland Sound, contained about 20 per cent more brush than that fascine there; (Indicating the fascine in the court room)

872 A. That is what I referred to; I thought there should be double the amount of brush than there is in the fascine here, not double the amount of brush in the fascines used at Fernandina and Cumberland sound, that was my intended answer.

By the Court: Were you in a position to know whether or not at the awarding of the contract in 1894 any different conditions were anticipated which were not realized, but which would induce the belief that that material would cost more put in the jetty than the contract price, which amounted to about eleven or twelve dollars a yard: that is, would have induced the belief that that price was too low?

A. The same work had been done or practically the same work had been done before at Cumberland Sound several times; the same elements were considered, or had been considered in previous contracts that there were in this contract of '94 and '95, except that the '94 an '95 contract, in that, the jetty was to extend further out to sea; so the further you went beyond the shoals, the more the liability of losing mattresses would be. That is all. The other elements remained the same in the '94 and '95 contract as in the '91 and '92 contracts and other classes of contracts exactly.

Mr. Conant: I would like to ask the Court, knowing that they desire the truth, and an exact understanding of the conditions for the privilege of a few moments of their time, to bring up a few questions, which I answered to appertaining to the work.

The President: You can merely correct your testimony of yesterday, if that is your desire, you can do so; do you wish to correct answers to specific questions?

A. I cannot remember whether some of the questions came up yesterday or came up Saturday afternoon.

The President: That is immaterial if you wish to correct it.

The Witness: In giving my testimony for fascines, 873 can I extend my testimony, or simply correct it, do I understand?

The President: You can correct the testimony and give the answer that you desire to the question; what was the question?

The Witness: The question was the description of the fascines used at Augusta.

The President: Very well, what did you say?

The Witness: I described the fascines and in my orders it was stated that they should be a certain length, 12 and 20 feet; well, this was explicit, yet I exercised some judgment in the length of the fascine, and would order that any fascines, varying 3, 4, or 5 inches from the 12 and 20 feet, was measured, and was allowed and was paid for; paid to the contractor. I was also asked about the cost of the plant, and of the lighters that I constructed; I found this morning in looking over the reports, that the cost of the lighter was $180; I believed I testified that the cost of the lighter was $400; I hadn't looked it up but relied on my memory previous to this morning. I testified about Capt. Carter coming on the work and inspecting the work and going over it; he did so; he made 8 trips to the work besides calling me to Savannah 3 or 4 times. I was questioned as to the cost of the work, I believe; the cost of my work compared to the cost of the contractors'; I wish to show a statement which enabled me to judge the cost of the work done by me and the cost of the work done previously. In an entry on my journal, on Dec. 2. I have this from Contractor Twiggs. It says he has spent $8,000 for labor more or less, and $6,500 for plant. This is very much more, the total amount than the amount of material for which he had been paid on that date—, many times

more. I spoke about the contract; I gave testimony about the contract with Mr. Reese as to rock; the agreement was that Mr. Rees was to load the rock on the lighter, which I bought at $1.50 a yard. I testified about the contract
874 with Mr. Reese as to the price to be paid him for rock, and the agreement. The agreement was that it should be loaded on the lighter at the quarry, for which I have an entry in my journal of such terms and in my report. That is all, Mr. Prsident, I have othed things to bring up, but they would not come in the answers to my testimnoy.

The President: At the proper time you can bring them up. The record is correct, is it, Mr. Conant?

The Witness: Yes, sir.

Mr. Blair: We perhaps would want to ask a question or two on the new matter brought out, if the Court will permit it.

The President: The Court will adopt the question, if it is proper.

Mr. Blair: I would like to ask, if the Court please,

The President: Question by the Court.

Q. If the witness made Mr. Twiggs cut off any fascines, because they were six inches or more too long, or rejected any fascines because they were six inches too short.

Judge Advocate: I make no objection to that question, but I call attention to the fact that that would properly be brought up by calling the witness for the defense.

The President: He has substantially answered that in the correction he made this morning.

Mr. Blair: He went up to 5 inches; he said, fascines that were 5 inches too long were paid for, and 5 inches too short were allowed for and not rejected.

Judge Advocate: I make no formal objection.

The President: You withdraw the objection?

Judge-Advocate: I make no objection.

The President: The Court has no objection; it may be answered.

Witness: Five inches I could have extended that to six inches. My journal shows 12 feet 5; when I said 5, I meant
875 3 or 4 more or less over the length given me by Capt. Carter, that I used discretion in allowing a few inches over, and if it fell a few inches short, he was paid for exactly what the fascines measured on the scow on the ground.

By the Court: The answer is not quite complete; I asked

him if he rejected any fascines if they were six inches too short.

A. I intended to extend that, no, sir, do not. If there might have been some one fascine cut off, or two or three fascines that extended over the jetty, it is possible, but the orders were not given, or the general class of fascines were not cut off 6 inches or 5 inches or that distance above the rest.

Mr. Blair: I would like to ask the witness if he delayed the contractor by being late in the morning at any time, or stopped the contractor by leaving the work early in the evening?

The President: This is a little irregular if the Judge Advocate objects to it.

Judge-Advocate: I certainly object to his using one witness of the prosecution to contradict another. If they desire to call him at another stage, they can do it.

Mr. Blair: Of course, it would shorten the matter a little, we are only trying to get at the facts in the case.

The President: Under the objection the witness cannot answer the question.

Judge-Advocate: I desire that everything shall be done decently and in order, even in arriving at the facts in the case.

876 MADISON COBB, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination.

Questions by the Judge-Advocate:

Q. What is your name, Mr. Cobb?

A. Madison Cobb.

Q. Where do you live?

A. In Augusta.

Q. Augusta, Ga.?

A. Yes, sir.

Q. Where did you live in 1892?

A. In Augusta.

Q. What was your employment?

A. Well, my regular employment was laboring wherever I could mostly get work to do.

Q. Whom did you work for?

A. I used to work for Mr. Wheeler on the river and Mr. Gaynor, and under Mr. Austin.

Q. Mr. Wheeler, Mr. Gaynor and Mr. Austin?

A. Yes, sir.

Q. What work did you do for Mr. Gaynor?

A. I worked for him down below here under Mr. Gaynor.

Q. What did you do for Mr. Wheeler?

A. I made fascines for him away up the river, up above Augusta, also down below Augusta.

Q. Did you do any work for Mr. Wheeler in 1893?

A. I don't remember the year, whether it was 1893 or not, it was the same year that Mr. Twiggs had his contract.

Q. How long before Mr. Twiggs had his contract, were you at work for Mr. Wheeler?

877 A. I did some work down here for him; I was taken sick and then went up there, and when Mr. Wheeler came up there in a week or two weeks, and went up the river, I went with him up there.

Q. How long before the Twiggs' contract was that?

A. I reckon I worked for Mr. Wheeler up the river about a month; then I came down and in about 5 or 10 days I came back down and then I went to work for Mr. Twiggs.

Q. We will get to that by and by, Mr. Cobb; what work were you doing for Mr. Wheeler?

A. I was making fascines for him.

Q. For what use were the fascines put?

A. Put in the river for making a run for the fall boat that goes up the river.

Q. Was Mr. Gaynor there at the time?

A. No, sir; Mr. Gaynor was not there.

Q. Did you see Mr. Gaynor there at any time during that time?

A. No, sir.

Q. Do you know who had the contract for the work that was being done?

A. I heard it was his.

Q. No matter what you heard; do you know?

A. No, sir; I was under Mr. Wheeler and Mr. Austin.

Q. How long were you engaged in making fascines?

A. I reckon I stayed up there about a month before I left him.

Q. Were you making them yourself or superintending their construction?

A. I was making them and I was foreman. I was at the braces.

Q. At the braces?

A. Yes, sir.

Q. That is, the ways on which the fascines are made?

A. Yes, sir.

Q. Did you say bench or braces?

878 A. Bench, the way you stand them up in the ground.

Q. I should call them ways, or horses. How were those fascines made Mr. Cobb?

A. We made them out of brush and poles, and drew them down with stretchers.

Q. What kind of stretchers?

A. We had rope stretchers.

Q. How were they tied?

A. We tied them down until they were a small bundle and then tied them with tarred cord.

Q. How large cord was it, or was it cord, or what was it, describe it?

A. It looked like a kind of grass, but it looked like it was tarred with tar, something like that.

Q. It was not woven, or twisted rope?

A. No, sir, it was not twisted, it did not have a twist in it.

Q. How close together did you tie those fascines?

A. Sometimes about four or five strings to a bundle.

Q. How long were the bundles?

A. Some of them, well we made some up there about ten feet long, some we made eight; I don't think we made any twenty feet ones up there, no, I don't think we did.

A. What kind of brush did you use?

A. Well, it was Willow, and anything most we could get hold of, that we could get hold of that was good to make fascines out of.

A. How near the place where you were making them did you procure the wood or brush? How near the place where you were at work?

879 A. Some times they would be right close to the work, and then again it would be a pretty good distance.

Q. What is a pretty good distance?

A. Some times it would be a mile from the work.

Q. That is, you had to go to get the brush to make the fascines of, did you have to go as far as a mile to get the brush for the fascines?

A. Some times we did, and some times it was close to the

work. Some times we would be working out in the river, and they would be right out in the swamp, right by the river bank.

Q. Look at those fascines back there, and see how those compare with the work you did. (Pointing at the fascines on the platform in the Court-room.)

A. That is something like, but we did not have oak, we hardly used oak up there at all.

Q. As to the quantity of material used, the amount of brush in the fascines?

A. Yes, sir, the bundles were about as much.

Q. As compared with these?

A. Yes, sir, we used brush just like that.

Q. Well, as to the size?

A. The size of the brush.

Q. The size of the fascine after it was made?

A. Some bundles were larger, and some were about that size.

Q. How about their being compressed, how close together were they tied, as compared with these?

880 A. That looks about like we made them up there.

Q. That you call choking don't you?

A. Yes, sir, that's choking.

Q. These are choked. Compare the choking of these, with the choking on those you made.

A. Yes, sir, just about the same, it looks to me like.

Q. Did you trim the brush?

A. Yes, sir, we trimmed off the limbs that was hanging off after we got the bundle tied down. If any limbs were hanging off loose, we cut those off.

Q. That was the extent of the trimming?

A. Yes, sir.

Q. Now, did you remain in that employment until that work was completed there?

A. No, sir, I taken sick up there and came to Augusta just before we got through.

Q. By whom were you next employed?

A. By Mr. Twiggs, he employed me next.

Q. Mr. A. J. Twiggs?

A. Yes, sir, Major Twiggs.

Q. Upon what work?

A. Upon the work up there, just this side of Augusta, just this side of the bridge.

Q. One of the river improvements?

A. Yes, sir.
Q. I mean your particular work was what?
A. My particular work?
Q. Yes, sir.
881 A. It was making the fascines for him.
Q. You were personally engaged in making them, and with others; did you work yourself in making them?
A. No, sir, I only gave instructions for them to be made.
Q. You were his foreman?
A. Yes, sir.
Q. How many men did you have employed?
A. I think we had about thirty six men.
Q. You taught them how to make fascines, as you had yourself made them at the previous place?
A. Yes, sir, I did.
Q. How did they compare with those you had made; were those as well made?
A. Yes, sir, they were made, just about as I made the rest of them where I first started, just about the same way I made Mr. Wheeler's up the river. I made his, about the same way.
Q. You know the Mr. Gaynor about whom you spoke; you worked for Mr. Gaynor?
A. Down here, I did; down here at Tybee, or Daufuski Island, somewhere up that side. I worked for him and Mr. Wheeler, and also for Mr. Austin.
Q. How did you start in, or how did you instruct your men to start in to make fascines?
A. I first got the stretchers made, and when I got to the swamp I got the stubs built and got them tied correct, and then got them cutting down the bushes and laid them in and showed them how to start and what to do with it, and
882 made some bundles for them and showed them what I wanted done.
Q. Did you ever see a chain used for a choker?
A. No, sir, never did.
Q. Not at any of those works?
A. None of the works I was ever at. I never saw a chain choker.
Q. Did you see Captain Carter? You know Captain Carter, don't you?
A. No, sir, I don't know him personally, I saw the gentleman in the camp there.
Q. This is Captain Carter here, do you recognize him?

A. He looks like the gentleman to me, that came up there sure (looking at Mr. Rose)

Q. Well, were you foreman of the camp when he came up there?

A. I was, sir.

Q. Who was with him?

A. Mr. Conant was with him.

Q. Well, what took place?

A. Well, when they came up there, they looked at the brush, and the objected to them, and Mr. Carter, I believe his name was, taken a hatchet I suppose, and cut the loose brush and trimmed it, and showed me exactly how he wanted it made, so I made them as near as I could like he said he wanted them made.

Q. They became a new industry? Had you ever seen the kind of fascines made that Captain Carter instructed you to make?

A. No, sir, I never did make any that way.

Q. You had never seen any?

A. No, sir.

883 Q. Did you engage the men as laborers?

A. Yes, sir.

Q. Who were under you?

A. Yes, sir.

Q. At what rate of pay?

A. Seventy-five cents, sir.

Q. Seventy-five cents a day?

A. Yes, sir.

Q. Now you have said Captain Carter took a hatchet and opened one of the fascines and then gave a lesson in the construction of them?

A. Yes, sir.

Q. Tell me how he went to work to do it.

A. Well he said that he wanted the fascines made out of the stems and of the limbs, he didn't want any brush in them. He wanted them made out of firm wood, straight poles. He didn't want any leaves, or fine limbs on them. He wanted them made out of the stem of the tree.

Q. How long were they?

A. Well, we made some twelve feet, and some twenty feet long.

Q. How long stems did you use?

A. We used them to reach from one end of the rack to the other, twenty feet.

Q. What had you been using in tieing the fascines?
A. Tarred cord.
Q. How did that compare with the cord or string that you had used before under Mr. Wheeler.
A. The very same stuff.
884 Q. The very same stuff?
A. Yes, sir, the very same material.
Q. Did Captain Carter say anything about the use of such material?
A. He might have said it to Mr. Twiggs, I didn't hear it myself, I knew a change was made and we had to use wire.
Q. You didn't hear the statement, but they ceased to use the material they had used for tieing, and used wire thereafter?
A. Yes, sir, we did away with what we had been using, and used wire after he had left.
Q. Did I understand you to say that you had never seen a chain choker used when you were in Mr. Wheeler's employment?
A. That's right, sir.
Q. Do you know of one being required to be used under Mr. Twiggs?
A. Not until Mr. Conant came up there I did not.
Q. Then there was one required to be used there?
A. Yes, sir.
Q. Can you describe it?
A. Yes, sir; we cut a couple of long levers, I suppose about that high, indicating, and trimmed one end off, and had a chain made with a ring in it in the one end, and slipped it over the end of the stub and drove it down as tight as we could get it at each end, and that is what we used after Mr. Carter came up there.
Q. Well, what force did you apply to it?
A. We had three men; two standing at the rack, and one cutting brush and bringing it to the rack, three men to a bench.
Q. The force you used in that choking generally?
A. We had two men to it.
885 Q. Two men to that?
A. Yes, sir.
Q. You choked them tighter with the chain than they had been choked before?
Mr. Blair: He never said that.

Q. Well, how did you choke them as compared with the choking of the fascines you had made before?
A. Well, I don't know as they was any tighter.
Q. Well, what force had you applied in choking them before?
A. I had the very same men before at the bench.
Q. I don't mean what force of men, I mean power, not the number of men.
A. The levers being longer, having longer levers we had more force to apply than we had before, and you could draw the bundle more tighter because you had more levers.
Q. That is with the chain?
A. Yes, sir, the levers were longer.
Q. That is what I was trying to get at.
A. Yes, sir.
Q. It choked them tighter?
A. Yes, sir, than the ones we had at first.
Q. You have worked for Mr. Gaynor before that time before you were with Mr. Wheeler, with whom you were then engaged, I so understood you, didn't I?
A. Mr. Wheeler was the first man I worked for on Government work.
Q. You said that you had worked for Mr. Gaynor; where was it you had worked for Mr. Gaynor?
886 A. Down below here.
Q. What place?
A. I don't remember the place between here and Tybee, or Daufuski.
Q. Near there?
A. Yes, sir.
Q. What were you doing there?
A. I was working on the river helping to make mats, and driving pilings.
Q. You helped to make mats?
A. Yes, sir.
Q. Did you see the fascines that went into those mats?
A. Yes, sir, I did.
Q. What fascines were used?
A. They were hardly fascines at all, they were hardly as good as these, (indicating fascines in the Court-room)
Q. Did you see any of them handled?
A. Yes, sir, I handled a good many of them myself.
Q. About how many men did it take to handle those?
A. If they were stout enough to hold up those twenty

feet ones didn't take two men, but sometimes they looked like they were going to break in two and it would take three men and sometimes they would break.

Q. Sometimes they would break?

A. Yes, sir, sometimes they would come in two.

Q. What became of them after they were broken?

A. Each man taken the pieces and carried them to the gin, and put it down there and put both ends together and wired it down.

Q. It still went into the mattresses?

887 A. Yes sir, it still went in.

Cross-Examination.

Questions by Mr. Charlton.

Q. How long have you been here in Savannah?

A. Living in Savannah?

Q. Yes.

A. I never did live here, only when I was down here working.

Q. When did you come here?

A. Saturday morning. I left home Friday.

Q. Were you in the Court House last Saturday?

A. Saturday gone?

Q. Yes.

A. Yes sir, I was here Saturday gone.

Q. Were you here yesterday?

A. Yes sir.

Q. Heard the witnesses testify?

A. Yes sir, I was here yesterday.

Q. Did you look at that brush carefully?

A. No sir, never looked as close as now.

Q. All the notice you have taken is what you have taken since you have been here?

A. Close notice, yes sir.

Q. That is all the close notice you took?

A. Yes sir.

Q. Yet you say that brush is like the fascines made for Mr. Wheeler and like the fascines made under Mr. Twiggs and like the fascines made under Mr. Gaynor?

888 A. Yes sir, that is just about like I made them.

Q. Do you see the bottom one of that pile?

A. No sir, I never noticed the bundle well, they are all brush.

Q. That is all you know about them, that they are brush?
A. Yes sir.
Q. Just look around there.
A. Yes sir, it is all brush.
Q. When did you get off the chain gang?
A. I never been on there.
Q. The last time up in Augusta?
A. I never was on one in my life.
Q. Which County was it, you were on one?
A. Me, I never been on any one.
Q. You have not forgotten about that, are you certain about it?
A. I know it.
Q. Do you know Jerry Searls?
A. Yes sir, I know him.
Q. Now, remembering Jerry Searls, are you still confident you have never been on the chain gang?
A. I is sir.
Q. Under Mr. Wheeler they used a rope choker didn't they?
A. Yes sir, we used rope.
Q. Did anybody teach you how to make that rope choker?
A. Yes sir.
Q. Who made it, who worked it?
A. They had some old ones when I worked for them, I used them.
Q. They took three men?
889 A. Yes sir, there were three men on the bench always.
Q. The difference under Mr. Twiggs was they used a cane choker?
A. Yes sir, we used a chain choker.
Q. When this gentleman came up there, didn't he show you how to choke (meaning Mr. Rose)
A. I don't know whether he showed me or not.
Q. You would not be apt to forget him?
A. I don't know whether he came and showed me personally or told Mr. Twiggs how he wanted it done. I know we made the chain, I had to go on what Mr. Twiggs told me after he was gone.
Q. You are certain he showed you how to make fascines because he used a hatchet?
A. Yes sir, he showed Mr. Twiggs and we had to make them as Mr. Twiggs told us.
Q. Was his head as gray then as now?

A. I never noticed that at all.
Q. He was quite as fat?
A. I never noticed that at all.

Mr. Blair: I think the record ought to show that this last witness—the gentleman this witness identified as Captain Carter was Mr. Rose.

Judge Advocate: I desire to suggest to the Court, there are two ways to impeach a witness. One is to show that what he has testified to is untrue; another is to impeach his credibility, and that I must protest against the line of cross-examination that has been commenced with the witnesses. That can only be for the humiliation. The colored witness may perhaps have have found his way in the chain gang
890 for some petty offense and still be a truth telling witness, and I trust we are not to have a repition of that because I don't wish to interpose objections to any course persued by the counsel. I want in this case, in the most generous manner I can, to offer the utmost lattitude in the cross examination.

Mr. Charlton: I desire to say that whenever the opportunity occurs I shall ask any question which will develope to this Court, the surroundings and circumstances of any witness. The question I ask is entirely admissable. It is asked for the purpose of letting the Court find out whether the man who has testified, although he may not be caught in a falsehood, that whether from the circumstances of his life he is such a man as will give truthful testimony. It is entirely admissible in a Court of Justice, and if the Judge Advocate desires to interpose objections, he must do it, because I intend at every opportunity, until the Court rules I shall not, to ask just that line of questions.

The President: It is the duty of the Court to protect witnesses, and it will endeavor to do so.

STEPHEN M. HILL, a witness for the prosecution having been duly sworn testified as follows:

Q. Mr. Hill, please state your full name and place of residence.
A. Stephen M. Hill.
Q. Stephen M. Hill?
A. Yes sir.
Q. Residence?
891 A. I can't tell you the number, I live in Hamburg, S. C. right over the bridge.

Q. Where were you living in Eighteen Ninety three?
A. Augusta.
Q. From August to November?
A. Yes Sir.
Q. What was your employment?
A. Well, Railroading the biggest part, on and off.
Q. From August to November?
A. No sir, I was employed by Mr. Twiggs I believe, at that time.
Q. By Mr. Twiggs?
A. Yes sir.
Q. What was the nature of your employment?
A. I was running a gang of hands, sort of overseeing them.
Q. What were the hands doing?
A. They were driving down pegs, and pinning down fascines for bank protection.
Q. How large were the pegs?
A. About three inches at the smallest end. I don't know what the diameter at the top was, I didn't measure that.
Q. How long were they?
A. About five or six feet.
Q. Did you superintend their drawing, did you say?
A. Yes sir.
Q. How much force was required to drive them?
A. To a peg?
Q. Yes sir?
A. Two men.
892 Q. Through what were they driven?
A. Through the fascines.
Q. Right through the fascines themselves?
A. Yes, sir, into the ground.
Q. Any difficulty in driving them?
A. Yes, sir, pretty hard; the pegs were so tall, you could not get up to them to drive good, and so large you could not get them through the fascines without its busting the bundles and tearing them up.
Q. Did you see the fascines burst by the driving of the stakes or pegs?
A. Yes, sir.
Q. What was done with the fascines then?
A. Taken out and tied, and bundled up again.
Q. How would you get the fascines out after the other pegs had been driven, after the one driven to break them?

A. Well, sir, you would have to pull them all out and get them out the best way you could.

Q. How many would you have to pull out at one time to get them out and remake it?

A. One bundle or one section.

Q. At any place where a fascine was burst by a stick being driven through it after other sticks were in, how did you get it out.

A. We just pulled the fascine out and took it out and tied it and knocked the pegs up or broke them off or got them up the best way we could and put down fresh ones.

Q. Now, after the fascines were in the water were you
893 ever told they were too long?

A. Yes sir.

Q. By whom?

A. Mr. Conant.

Q. Well, what did you do then?

A. I would have to cut them off.

Q. Did you have to take them out of the water to cut them off?

A. No sir, we would cut them off with an axe.

Q. Well, after they were in the water?

A. We would take them out and cut them off.

Q. Did you see any that were in the water taken out and cut off?

A. Yes sir, I have taken them out myself.

Q. Was any pile driver used there?

A. No sir, Mr. Conant said the stobs had to be driven down if we had to send off and get a steam pile driver.

Q. None was used?

A. No sir, I didn't see any.

Q. What do you know about sinking the mats?

A. I sunk a great deal of them.

Q. A great many of them?

A. Yes sir.

Q. Well, how about determining the proper place in which they were sunk;

A. Well, we had lines to go by, stobs on the bank.

Q. Who established the lines?

A. Mr. Conant.

Q. Well, what success did you have in meeting the requirements?

894 A. Right sharp time. We would get four or six inches out of the way and we could not get them back.

Q. Were you required to get them back into place?
A. Yes sir, we had to stop the steamboat and get her to come up and pull them back.
Q. Did that delay the work?
A. Yes sir.
Q. How long would you have to wait under such circumstances or did you have to wait for the steamboat?
A. Yes sir, we had to wait all the time for that. I could not say exactly, from one hour or a day. The boat would be down the river the greatest portion of the time.
Q. How often did that occur?
A. Well I don't know sir, I couldn't say exactly, it has been so long now.
Q. Well, arrive at as definite a number as you can?
A. I suppose two or three times a week, I suppose somewheres along there.
Q. For how many weeks, two or three times a week for how many weeks? Was that occurring all the time?
A. No sir, not all the time, I could not say exactly how many weeks it was that it occurred.
Q. Had the rock been put in place before those mattresses had to be pulled into line, had the rock been put in place to hold the mattresses down before they were pulled into line?
A. Yes, sir, some rock was there, on the mattresses, to hold them down.
895 Q. Well, could they be pulled into line with the rocks on them?
A. No sir, we got them in with the steamboat.
Q. Well, what was done with the rocks?
A. I had to make my hands go down there, dive down, and get them off, and come back on the lighter so I could get them back into place. Where it was not diving, it was wading.
Q. (I show the witness exhibit 63) Do you recognize what this is a photograph of?
A. Yes sir, I worked on the jetties, I could not say what place it was.
Q. Is it not on the work on which you were engaged, or is it a photograph of the work on which you were engaged?
A. Yes sir, I think it is.
Q. Can you discover any stakes or pegs there?
A. Yes sir, quite sharp of large pegs here. I see quite a number of those.

Q. You see the mans hat there?
A. Yes, sir.
Q. Now did you see pegs of that comparative size or stakes driven in the work?
A. Yes sir, I have driven a lot of them myself. Usually I drove them of that kind.
Q. All you drove were of that kind?
A. Yes, sir.

Cross-Examination.

Questions by Mr. Charlton.
Q. When did you come to town, Mr. Hill?
A. Saturday morning
896 Q. Were you here yesterday when Mr. Twiggs testified?
A. Yes, sir.
Q. Heard his testimony?
A. Yes, sir.

Judge-Advocate: I desire to state as regarding the presence of the witness when the case first began. I started to ask Counsel as to their desire in the premises. I have no objection to the presence of the witness.

Mr. Charlton: We have no objection.

The President: The Court will remove them at the request of either party.

Mr. Blair: We have no objections.

Mr. Charlton: None in the world, and have urged none.

AMORY SIBLEY, a witness for the prosecution, being duly sworn testifies as follows.

Direct Examination.

Questions by the Judge-Advocate.
Q. What is your full name?
A. Amory Sibley, Augusta, Ga.
Q. Were you employed from Augusta to November Eighteen Hundred and Ninety three?
A. I was employed under Captain A. J. Twiggs, on the Savannah River, placing in jetties and sinking mattresses.
Q. What was the nature of your employment.
A. Well, sir, I superintended the making of mattresses, the sinking of mattresses, the pinning down of fascines,
897 both on the jetties, the top dressing of the jetties, and on the shore protection and the excavation of shore protection.

Q. Then you were Superintendent for Mr. Twiggs?
A. Yes, sir.
Q. Did you see the fascines first made there under that contract?
A. I did sir.
Q. Who was the foreman?
A. Madison Cobb.
Q. And you saw the new ones subsequently, of course?
A. Yes, sir.
Q. What was the difference in their construction?
A. The latter was made all of wood, with no brush. I went down one morning with a force of hands, and a load of brush, and fixed the fascines. Mr. Conant came down just as I finished. He and George Binar. I was just fixing to untie the lighter and tow it up the river and Mr. Conant got off the boat on the barge and walked around and said none of those fascines are good, I reject them. I asked what the trouble was, and he said "I don't want them, they are not up to the specifications as what are required by Captain Carter" I unloaded them; in the meantime he went off and left George there. He had a negro named Gus, who paddled him up sometimes.
Q. How were those fascines made that he rejected?
A. I don't know, he said something about Captain Carter rejecting some of the first ones when he was there. I never saw Captain Carter in my life until Saturday. These were rejected by Mr. Conant when I sent for him myself.
Q. How long after the work began on the contract?
898 A. I don't remember that exactly, it was the first part of the work.
Q. Well, were they of the same character as the fascines that were used in the work?
A. No, sir, he made us get them much more woody, poles in fact. They were not of the same character at all, because the last ones were made of wood poles and these were not brush; and after I had got the lighter unloaded and he left this man George there and showed me the class he could use you know, I saw I could not get enough. There was not enough to pay for the towing of several hundred bundles and I stopped. Mr. Conant came up in the meantime, and I asked him to walk to the brush camp with me, which was not very far out in the river swamp. He showed me the character of brush he wanted used in making these fascines. He walked out there and showed me exactly I could not see much, if any

difference between the ones rejected and the kind he pointed out, notwithstanding we went to work and made the class he said he wanted; we went and hauled that class that Mr. Conant wanted. When we got on the wharf, he had George to investigate every bundle and saw there was not a loose wire on it, and every bundle that had a loose wire was thrown aside and rejected, and a good many of those he said there was not enough wood in them.

Q. That was at the place where the fascines were to be used?

A. Yes, sir, out where we made the mattresses.

Q. They were rejected at their final destination?

A. The first load was rejected right on the bank, and the high water washed them away, and it not only washed those away that were on the bank, but there were hundreds in the woods at the benches, that we would not haul after he condemned them.

899 Q. After they were rejected, you left them there; how about the stakes that were used?

A. The pins that were used in driving them in?

Q. They were called stakes I think, in the contract?

A. We used four foot pins on some of the jetties and work not far out from the river bank. When we got further out in pinning down the top, we dressed off the tops of the jetties with twelve foot fascines. After we sunk the mattresses a certain height, then those jetty fascines were pinned down for a certain distance we used four foot pins or pegs and as the river bed slopes down and it was deeper towards the end of the jetty. He made us use pins that averaged from four to six and nine feet, some of them just as far as a man could reach with a maul. He said they had to go through the fascines from the top of the jetty.

Q. How about the stakes that were used; the reporter has not your reply?

A. Well, some of the stakes we used in pinning down the fascines in the shore protection Mr. Conant required to be six feet in length, six inches at each end, three inches at the small end in diameter. When we attempted to drive them down with forty pound mauls we found it was just entirely impossible to drive them down by physical force, and Mr. Conant said they had to go down there if Captain Twiggs had to send and get a steam pile driver.

Q. Was there difficulty encountered in procuring the necessary material for fascines in the vicinity?

A. Yes, sir, we had to go twenty odd miles to get it. He told me in regard to getting the poles, I went for the
900 poles myself, and showed the hands what class to cut, and what size to cut I had several hundred hauled up on the wharf and Mr. Conant said they were too crooked, and said that down here about Millen, we could get all we wanted, and that we had to send down there to haul them up by train.

Q. How far was that away?

A. Fifty three miles to Millen.

Q. Now how was the line determined where those mattresses should rest when they were sunk?

A. The place was staked off from the bank, and Mr. Conant would never let a mattress be sunk that was from two to six inches out of place. He has delayed me; that was my principal work he has delayed me day after day, with the barges anchored out and stones on it, the mattresses around it, and we would float one around, and it would go down the stream out of the way, from two to six inches, and it was impossible to pull it right up plumb at times.

Q. How was the line determined, by range stakes on either bank?

A. Yes sir, and he stood on the abnk and watched it.

Q. How was the sinking of the mattresses, how was the line arranged?

A. His man George would go around and sink it and see when it was level; he has kept me there day after day until the steamboat came.

Q. You didn't understand my question. How was the mattress itself marked, to bring it within the range line?

A. How were they brought around in the jetty?

Q. After the mattress was sunk out of sight, how could they sight the place where the mattress was going down?

901 Q. It was sounded to find the line?

A. Mr. Conant would sit on the bank, and mark it by the poles alongside the lighter.

Q. Was it from the sounding the range line was determined, was there any other way?

A. Boat poles were used.

Q. Did you ever experience delays in the performance of your duties?

A. yes, sir, I have much, as I told you, mattresses anchored out around the lighter, and stone, and George has come down there and told me, Mr. Conant will be down here at such a time, and Mr. Conant would come down here at

the time he said, but my men had to sit there until he did come, waiting for those mattresses to be sunk.

Q. Did you have any employment for them until he did arrive?

A. No, sir.

Q. How long were you ever delayed at one time, waiting?

A. The longest delay we ever had was when we were fooling with mattresses trying to sink them and the mattresses got out of place six or eight inches, and he made us wait all day for the steamboat to come.

Q. All, day, from what time in the morning?

A. It happened between nine and ten o'clock in the morning.

Q. Did the steamer come at all that day?

A. The steamer came very late in the evening. Captain Twiggs was very mad with me.

Q. Well, how about the fascines, if they were too long.

A. Whenever one was too long, and placed in a mattress, it was cut off to make it even, and when it was short he rejected it.

902 Q. What excess of length was permitted?

A. About that distance, sir (indicating)

Q. Well, what should you estimate that distance?

A. If we had a hatchet, we would chop them off in the water.

Q. What distance would you estimate that distance of your hand?

A. About six or eight inches. He required them to be even. When a fascine was brought there and some ends stuck out, a little end would cause it, Mr. Conant rejected it, and laid the fascines there on the wharf, where the negro George examined the lot, and they were loose. He was the principal one that examined them, and they were thrown out. When Mr. Conant came there, I called his attention to the fascines, and asked him if that wood was not sufficient, and he said, "they are pretty good, but there is a lot of loose wires in there, George says so; a lot of those bundles have crooked sticks in them and I don't propose to use that lot for fascines." Some of those bundles I hauled home and burned and fired the steamer with them, they were such good wood.

Q. Wood that was rejected could be used for fuel?

A. Yes, sir; we fired the steamboat with them, and Captain John Baler and I carried them home and used them in my stove.

Cross-Examination.

Questions by Mr. Charlton.

Q. Mr. Sibley, what was your first experience with the construction of fascines?

A. That year, sir.

Q. About what time that year?

A. When the work commenced.

903 Q. That was the first time you had ever seen one?

A. Yes, sir.

Q. The first time you had even seen one constructed?

A. Yes, sir.

Q. About what month was that?

A. August, Eighteen Ninety Three.

Q. About what time?

A. Well, I don't remember exactly sir.

Q. The early or late part of the month?

A. I was in Capt. Twiggs employment the seventh of August, Eighteen Ninety three.

Q. Well, how long did the employment continue?

A. Until the end of that jetty work.

Q. When was that ended?

A. I think it was ended somewhere in the spring of Eighteen Ninety Four.

Q. When were the fascines rejected, the ones you have just spoke of by Mr. Conant?

A. Which ones, the ones used for Mr. Twiggs?

Q. Yes, sir.

A. They were rejected at odd times.

Q. You spoke of a large lot rejected at once?

A. Yes, sir, a large lot were rejected for loose wires; we brought the whole brush camp up there and choked those bundles again and wired them.

Q. Well what became of those?

A. Which ones?

904 Q. The ones you are talking about?

A. We used them, the crooked poles though, we didn't use.

Q. About how many were rejected for not being properly wired at that time?

A. I forgot how many loads were on the wharf at one time. They were thrown out, and the high water carried them away.

Q. How much of this collection you have just talked about, as much as one hundred?

A. Nine hundred

Q. How many went in the work after being properly wired, eight hundred and fifty?

A. A very small per cent of them, because he claimed so many crooked poles were in them.

Q. Well, about what percent?

A. I suppose we used one hundred or one hundred and fifty after repacking them, he rejected them.

Q. What became of the balance of them, the seven hundred and fifty.

A. I could not tell you how many there was, they were just piled up there.

Q. What became of them?

A. I told you a lot of them floated off.

Q. Well what percentage floated off?

A. That I could not tell.

Q. Half?

A. I suppose, as I told you we lost about nine hundred fascines.

Q. Well, did the nine hundred float off?

905 A. I suppose so, they went off from the wharf upon the high water

Q. They just dissappeared, you don't know what became of them do you?

A. Like some of the mattresses; we had a large quantity of mattresses float off.

Q. Just answer this question, you can get to the mattresses afterwards; what became of the nine hundred fascines rejected, except the one hundred and fifty used in the work?

A. I don't know sir, they went down the river.

Q. How much?

A. All that was in that lot went down the river.

Q. All went down the river except what was in the jetty?

A. Yes sir, I hauled two or three truck-loads of them home for cooking purposes.

Q. How many fascines were on a dray-load?

A. I don't know, the bundles were pretty heavy.

Q. Well, about how many fascines on a dray-load?

A. You must remember, they were twelve and twenty feet long, I could not tell you how many.

Q. Don't you know whether there was one or ten?

A. Yes sir, I suppose seven or eight.
Q. Seven or eight to the dray load?
A. Yes, sir.
Q. What sort of a dray.
A. A two wheel dray.
Q. A long body, or a short body?
A. It was just a flat dray.
906 Q. Like those they have here?
A. No sir, I have not seen any here since I have been here.
Q. You say those fascines were on the wharf?
A. Yes, sir.
Q. What is the size of that wharf?
A. About forty feet.
Q. Long?
A. No sir, wide.
Q. Well about how long?
A. Have you ever been to Augusta?
Q. I have had the honor to be there several times.
A. Have you been on that wharf?
Q. No sir, I don't think I ever did. I am quite sure the Court has not.
A. There is a deck foundation, and it slopes away to the top of the bank. Those fascines that were rejected were piled down here as much as possible, out of the away.
Q. Now, will you be kind enough to tell me the dimensions of the wharf? It was forty feet wide, and how long?
A. About four hundred feet I reckon.
Q. Four hundred feet by forty? Has that wharf got any name?
A. None that I know; the Augusta wharf, that is all I know.
Q. The Augusta wharf?
A. Yes Sir
Q. Are there many wharves in Augusta?
A. That's the only one I know of
Q. That is the only wharf in Augusta?
907 A. That I know of.
Q. At the foot of what street?
A. It is on Bay Street.
Q. Does Bay Street run down to the river?
A. Yes Sir.
Q. Do steamers land at that wharf?
A. Yes sir.

Q. Was there any merchandise on it at that time, the fascines were there?

A. On the wharf? There was no merchandise on the wharf during high water; they don't leave any merchandise on the wharf in high water.

Q. When the fascines were put on the wharf, it was not high water

A. No sir, it was not

Q. Was any merchandise on the wharf when the fascines were put there?

A. I don't know, there was not any out on the end where they were

A. Any cotton on the wharf?

A. No sir.

Q. And freight of any character

A. That is a question I can't answer; there may have been freight by the brick shed, where it comes down; there is an elevated part, maybe forty or fifty feet wide that runs back into the wharf seventy five or eighty feet.

Q. The steamer from Savannah stops at that wharf?

A. The Decatur and Ethel were running there then.

Q. They go up pretty well loaded?

908 A. Sometimes they don't, and sometimes they do.

Q. They come down pretty well loaded?

A. I have seen them come down pretty slack loaded.

Re-direct Examination.

Questions by the Judge Advocate

Q. You spoke of hauling seven or eight of those fascines on a dray. Over what kind of roads could you haul those?

A. It was very heavy pulling from there up to the Street.

Q. That was in Augusta, that that hauling was done?

A. It was right there in Augusta. I had them carried to my house.

Q. They were on City roads?

A. Yes sir

Q. How many could be hauled to the place where they were made in the swamps?

A. No sir, they were hauled from the wharf to my house through the City Streets

Q. How many of those fascines could be hauled on a dray where they were constructed in the swampy land?

A. We hauled on a four mule team, eighteen or twenty bundles of the twenty foot fascines, to a load.

Q. You saw them on there Mr. Sibley, did you see them on the drays? the fascines?

A. No sir, I just told them to go down there and haul me two loads home.

Q. No, we are talking about different things?

A. Yes sir, I see that

909 Q. I want to know, you say it was a heavy load for a dray, the seven or eight fascines you had hauled to your house over the City road?

A. Yes sir.

Q. What I want to ask you about, is, the load that could be carried through the swampy land where the brush fascines were made.

A. Yes sir, well I say that the roads have been there so I have only seen twenty one of the twenty foot bundles hauled on four mule team.

Q. Well, that is hauling three times as many as you hauled in the City?

A. But that is a four mule team.

Q. Yours was a two mule team?

A. No sir, it was a one mule team.

JOHN W. BOHLER, a witness for the prosecution being duly sworn, testified as follows:

Direct Examination.

Questions by the Judge Advocate.

Q. What is you full name,?

A. John W. Bohler.

Q. What is you occupation?

A. Well sir, I am farming now, and steamboating together.

Q. Farming and steamboating?

A. Yes sir.

910 Q. What were you doing from August to the close of '93?

A. I was working for A. J. Twiggs.

Q. In what capacity?

A. Running his steamboat, master of the steamboat.

Q. You were the pilot of it?

A. Pilot and captain.

Q. Pilot and captain of the boat?
A. Yes, sir.
Q. On what work was the boat employed?
A. The jetty work of the Government contract of 1893.
Q. Carrying material?
A. Yes, sir.
Q. What material did it carry?
A. We hauled fascines and poles and other material that was used on the work.
Q. You hauled the fascines from the place where they were constructed to the place where they were used?
A. Where they were used, yes, sir.
Q. Do you remember the fascines their dimensions?
A. Yes, sir.
Q. What were they?
A. Twenty feet and twelve.
Q. Do you remember anything about their weight?
A. Yes, sir, I can come pretty close to it; a 12 foot fascine it would have taken 2 men to handle them, where they could get at them well. It often taken 3 men in places. On the 20 foot fascines we used four men to store them away on the boat.
Q. That is for storage?
A. Yes, sir.
Q. They were hauled to the place of landing and there transferred to the boat?
A. Yes, sir.
911 Q. And it was on that transfer that you saw the number of men required to handle them?
A. Yes, sir.
Q. Did you see them as they were brought to the landing?
A. Yes, sir.
Q. How were they brought?
A. They were brought in a wagon.
Q. What kind of a wagon?
A. A 4 horse wagon.
Q. A four horse wagon or four animals? How many could be transferred at a time?
A. Well, sir, the swamp roads after a freshet are pretty soft, about three to five bunches from four to five.
Q. You saw them often brought to the landing?
A. Yes, sir, and when the roads were in good condition, they could bring from 7 to 8 of the 20 foot fascines.

Q. Seven to eight when the roads were good, even on swamp roads?

A. Yes, sir.

Q. Did anybody have a better opportunity than you to learn how they were transported?

A. No, sir, I don't think so, sir.

Q. How far did you have to take the fascines to the place where they were used in the improvement?

A. We got them down as low as 22 miles down the river at a place called "Hungry Swamp."

Q. Did you get a great many there?

A. Yes, sir, a great many of them there, the greatest portion of them?

Q. The greatest portion used under the Twiggs' contract?

A. Yes, sir.

Q. Did you have any work to do on the mats?

912 A. No, sir, except putting them up into place sometimes with the steam boat.

Q. You did have that kind of work to do?

A. Yes, sir.

Q. Frequently?

A. Yes, sir, very often; I could not state how often sir, exactly.

Q. Well, approximately, if you can, the number of times the boat was engaged in that business.

A. I reckon it was 2 or 3 times a week, sir.

Q. Your boat was the one boat that was called upon to perform that work, I suppose?

A. Yes, sir.

Q. How was word conveyed to you that you were required?

A. To pull those mats up?

Q. Yes, sir.

A. I could not get any word until I came up with the steamboat.

Q. Then you found your services were needed when you reached there?

A. Yes, sir.

Q. When you reached there, what was the condition of things at the works?

A. Well, sir, the mats would be out of place a few inches, six or seven inches.

Q. Well, what were the laborers employed there doing?

A. Sitting around there, not doing anything, sir.

Q. Did you ever attempt to move the mattresses with the rock on them with the boat?

A. Well, yes, sir, when there were a few rock on them you could hook up and try to pull them up, and you sometimes could pull them up.

Q. You could sometimes pull them without moving the rock?

A. Yes, sir.

Q. When you could not so remove them what was done?

913 A. The hands would have to get in the water and get them out the best way they could.

Q. You saw the character of stakes that were used in the work?

A. I hauled a good many on the steamboat.

Q. You hauled a good many?

A. Yes, sir.

Q. They were prepared where the fascines were prepared?

A. Some of them and some were close to the town.

Q. Did you witness the driving of them?

A. I seen some of them drove, yes, sir, a great many.

Q. Well, with what ease would they drive in the ground?

A. The stakes were 6 feet long, they were beveled on two sides, to drive in between the bundles of fascines, and they were drove in with mauls, two men on a stake.

Q. Did they drive home?

A. No, sir, sometimes they would and sometimes they would not, very often they would break the bundles or fascine and they would have to be taken out and re-wired, the wood was so large three inches at the small end.

Q. And it would burst the fascines?

A. Yes, sir.

Q. Were the fascines that were delivered aboard your boat at the landing place, measured there when you first received them?

A. Sometimes I have seen them measured on the land.

Q. Were they measured at the point where you put them off?

A. They were measured on the barges and some on the steamboat.

Q. Whom did you see them measured by?

A. Mr. Conant.

Q. Well, if they were not satisfactory, what action was taken?

A. He condemned them and threw them out, sir.

Q. Well, for what reason, wherein would they be unsatisfactory?

A. If they would be with crooked timber in them, fine or having crooked places from slack wire, if it was green
914 wood when it was cut, when it was seasoned the wire would slack up and they all had to be re-wired.

Q. Did you lose any mats at any time?

A. Yes, sir.

Q. In trying to haul it into place, was that it?

A. Yes, sir.

Q. How was it lost?

A. Torn up by towing it with the steamboat.

Q. How was it lost?

A. We have tore up several of them by towing them around by the steamboat; they were not measured until after they were taken to the work.

Q. Do you know what has become of the mattresses that were lost?

A. Yes, sir, one of them I seen a year ago 14 miles from Augusta, lodged in a bite.

Q. What sort of condition?

A. In good condition, it was a 20 foot mat.

Q. Hanging together well?

A. Yes, sir.

Q. Did you do any work on the old improvements of the river?

A. We went down below the Port Royal bridge and tore up one jetty, one or two, I don't remember which.

Q. You were personally engaged in that?

A. I was there with the steamboat and towed them up the river.

Q. Did you find any brush there?

A. None worth speaking about, none worth measuring, Mr. Conant didn't measure it.

Q. The stone was there?

A. Yes, sir, some few, I suppose we get over 20 yards from the portion we tore up.

915 *Cross-Examination.*

Questions by Mr. Charlton.

Q. You were a steamboat man?

A. Yes, sir.

Q. Did you have anything else to do with the operation of that work except conducting the steamboat?

A. No, sir.

Q. Where did you find this mat that you speak about in the bite, how far below Augusta?

A. It was below Brier Creek, between Briar Creek and Haygoods, about 140 miles below Augusta.

Q. That is almost to Savannah.

A. The way the steamboat went, about 140 miles.

Q. How far from Savannah?

A. From the way the steamboat has to go it is 300 miles.

Q. About half way?

A. Only 202 according to the surveys.

Q. How did you come to recognize that mat 140 miles from Augusta?

A. It was there on the bank.

Q. You recognized it as soon as you saw it?

A. Yes, sir.

Q. Who would be apt to know better about the capacity of the wagons to haul fascines, you or the superintendent?

A. Well, sir, I was.

Q. Why?

A. Because he was on the work and I was down in the swamp, hauling them up.

Q. I thought you were on the steamboat?

A. Yes, sir, the wagons would haul them to the landing, and I would transfer them to the boat.

Q. Then the superintendent was not a judge of it?

A. I don't think he knew so much about it.

916 Q. Does he know very much about what he testified to? He was just as positive about that as anything else.

A. I say I had seen more hauling than he had.

Re-direct Examination.

Questions by the Judge-Advocate.

Q. You said you recognized this mat as the work that had been done by Mr. Twiggs, had you ever seen mats like these?

A. No, sir.

Q. No where else?

A. No, sir.

WILLIAM H. PATTERSON, a witness for the prosecution, being duly sworn, testified as follows:

Q. What is your full name and place of residence?
A. W. H. Patterson.
Q. What is your place of residence?
A. Atlanta, Ga.
Q. What is your business?
A. I am a dealer in investment securities, bonds and stocks.
Q. In what business were you engaged in 1896?
A. In the same business then that I am now, and in the stone business in addition; a granite business.
Q. Did you become aware in 1896 that proposals were called for for bids to make improvements in the waters of this engineering district?
A. Yes, sir.
Q. Did you propose yourself to become a bidder?
A. No, sir, I did not.
Q. Did you propose to take any interest in any bid?
A. I desired to furnish stone.
Q. What steps did you take?
917 A. I first procured copies of the specification, then I came to Savannah I think, the day before the bids were to be opened, and talked with one, I am not sure, whether it was more than one, but certainly one contractor, about stone.
Q. Who was the contractor?
A. Mr. Gaynor.
Q. Do you know his full name?
A. I believe it is E. H., I know he is called Ed. Gaynor; I had met him a few times prior to that here.
Q. You talked with him about furnishing the stone?
A. Yes, sir.
Q. Furnishing it to him?
A. Yes, sir.
Q. Did you make a price on your stone?
A. I did.
Q. Do you remember what price it was?
A. No, sir, I do not.
Q. Do you remember that the specifications called for different classes of stone?
A. Yes, sir.

Q. First, second, third and fourth?
A. Yes, sir.
Q. What kind of stone did you propose to offer?
A. I am clear as to the first and second classes, and I think I made a figure on third class stone.
Q. You had no stone to meet the requirements of the fourth class?
A. No, sir.
Q. Do you remember what figures you made?
A. I do not, sir, not accurately. The best recollection I have about it is that I proposed to furnish first, second and third class stone for Savannah at something like $1.25 a yard; it may have been $1.35, I cannot remember distinctly,
918 and for Fernandina, for the Cumberland Sound work, as I understood it, I think at $1.60 or $1.70 a yard.
Q. Was that a yard or ton?
A. A cubic yard, as I remember it, it may have been tons.
Q. It was for whatever quantity is called for in the specifications, if the specifications called for yards it was for yards, and if for tons, it was tons?
A. It is my recollection that the specifications called for yards, it has been quite a long time ago.
Q. What kind of stone did you propose to offer for?
A. Granite.
Q. Do you know the Venable quarries?
A. Yes, sir, very well.
Q. The same kind of stone?
A. Practically.
Q. Were you enabled to dispose of that stone at the price you named?
A. No, sir.
Q. Were you present when the bids were opened?
A. Yes, sir.
Q. Do you remember who was present?
A. No, sir, there were a good many people I did not know.
Q. Can you recall any one that you did not know?
A. I think the Venable Bros. were here; I am quite sure one of them was in the room; I think both were; I am not positive as to both; a Mr. Moore of Mobile and a young gentleman, who I was told was his son, I think was there; a man by the name of Walker from Lithonia, another stone man,

and the two Gaynors, I think, John Gaynor and Edward Gaynor, and I think Capt. Green was there and quite a number of others who I did not know.

Q. You have not a definite recollection?

A. No, sir.

Q. You saw all the parties you have named while you
919 were here that day?

A. Yes, sir. I think they were in the room at the time of opening the bids. I am not positive as to all of them.

Q. Now, did you see any bids put in?

A. Yes, sir, I went in Capt. Carter's office a little while before twelve o'clock; a few minutes before, and a gentleman who was pointed out to me as Capt. Carter, I had never met him, I do not know that I see him now, of my own knowledge, he and another man were behind a desk or table, as I remember it, and there were four piles of envelopes, large official envelopes alongside of each other on the table; just a little bit before the clock struck twelve, or began to strike, one of the Gaynors, I think it was John Gaynor, and I think Capt. Green, came in together, and after the clock began to strike twelve, one of those two gentlemen walked over to the table and laid down two large envelopes, and either Capt. Carter or the man at the desk placed them on the pile. As soon as the clock finished striking, they began to open the bids.

Q. How many piles were there?

A. I think there were four.

Q. After the bids were opened, did you have any conversation with them about furnishing the stone?

A. Yes, sir, I saw Ed. Gaynor at the DeSoto that afternoon and asked him where I was on rock, and he said he didn't know; I said, "You have got other propositions from other people, am I high or low?" He said, "I can't tell you that now." I think I can get stone furnished cheaper than any one was bid." And he said, "I'll see you later;" and it will be later when he sees me, I have not seen him since.

Q. Do you know how many bids there were in each pile, Mr. Patterson?

A. I think there were four, I cannot be positive, it has been so long ago.

Q. How long before the bids were opened, Mr. Patter-
920 son, did you give prices to Mr. Gaynor as to what you would furnish that first, second and third class stone for?

A. It was during the morning; I think before I gave him the proposition I asked him how late I could hand it in to him, and he mentioned an hour; I cannot remember, it seems

to me it was eleven o'clock, it may have been ten; I don't remember distinctly, it was that morning, an hour or two before the bids were filed.

Q. Did you hear anything about Florida stone being used, —that would have been of no interest to you I suppose, Mr. Patterson?

A. No, sir, I had no interest in Florida stone, as I remember it, Mr. Gaynor, when I was talking with him about stone, said he would have to use granite for first, second and third class stone, but he could use Florida stone for the fourth class stone, and there was no use for me to bid on that.

Q. Was that before or after the bidding?

A. Before.

SAMUEL M. HALE, recalled as a witness for the prosecution, having been previously duly sworn, testified as follows:

Direct Examination.

Questions by the Judge-Advocate:

Q. I will take you right to the subject of the examination in relation to the Twiggs' contract. You remember you have been sworn heretofore, and that always remains going through the entire trial.

A. Yes, sir.

Q. You were an inspector at the time the Twiggs' contract was being executed?

A. Yes, sir.

Q. Were you on duty in Augusta at that time, at any time?

A. Yes, sir, during that time, yes, sir.

921 Q. Do you know anything of the inspection of the fascines?

A. Yes, sir.

Q. As to their length and construction?

A. Yes, sir.

Q. Do you know anything of the fascines being of too great length?

A. Yes, sir, well, they used both lengths, yes, sir as to the length.

Q. But if they were longer than the specifications required, what was done?

A. If they were four inches or more longer, they were always cut off; I was told to cut them off.

Q. Told to cut them off, by whom?

A. Mr. Conant, the inspector in charge.

Q. Do you remember when he went up there?

A. Yes, sir, on December 11th.
Q. Did Capt. Carter come up there while you were there?
A. Yes, sir.
Q. Did you have a conversation with him in regard to the manner in which the contract was being carried out?
A. Yes, sir, Capt. Carter asked me regarding the trouble that happened there, he said that Mr. Conant had told him something about stone being used that I had condemned, and then he asked me about the way that Mr. Conant treated Mr. Twiggs, or something to that effect. I told him at the time that I didn't think Mr. Conant was doing what was right, that is, in such a way as that; that was the impression I intended to leave with him.
Q. Doing right in what, Mr. Hale?
A. What I meant is I didn't think he treated Mr. Twiggs right in the matter.
Q. Do you mean in a social or business way?
922 A. Social and business way?
Q. Well, how in a business way?
A. Well, in a business way, in the first place, of course, I had never seen the specifications, it is true, but he went to extremes in several things, such as cutting off those fascines at six inches, those that were in a wire bundle, and there was only a part of the fascines projecting out, instead of putting them down stream, he would have all those little ends cut off.
Q. As to his criticism of the work of Mr. Twiggs?
A. He claimed that Mr. Twiggs would never do anything that he told him to do; he said Mr. Twiggs would always say things that he would never do, which I found to be different.
Q. As an inspector how in your judgment was that work being done?
A. Well, I think that the work was done all right, except that Mr. Conant did go a little too far in some things.
Q. How was it you differed with Mr. Conant in his views as to the way Mr. Twiggs was working?
A. Well, sir, as I say, about this brush matter, and then about the sinking of the mats and things of that kind. Of course, if I had gone by the specifications, I would have been somewhat different from that; I would not have held everything to the inch, it is true; I mean I think he went a little too far in this case.
Q. Too rigid?
A. Yes, sir.
Q. This was on Jan. 5th, you say, that Capt. Carter came, when did you return to Savannah?
A. January 7th.

Q. You told Capt. Carter about this difference of view between Mr. Conant and yourself?

A. Well, I told him Mr. Conant was too hard, I thought, with Mr. Twiggs, or something to that effect, I cannot
923 remember the words exactly.

Q. When did you return to Savannah?

A. January 11th, the 7th, I mean to say.

Q. Did you return again to Augusta?

A. No, sir.

Q. Where did you go then.

A. I was sent to report to Mr. Gieseller at first on different little surveys being done on the river. And then afterwards to Mr. Cooper, and then I was on several surveys after that on the annual surveys.

Q. But never again while the Twiggs' contract was in force did you go to Augusta?

A. No, sir.

Cross-Examination.

Questions by Mr. Charlton.

Q. What had been your experience as an inspector before you went to Augusta?

A. I had never been an inspector of mats before.

Q. You never had been?

A. No, sir.

Q. How long were you at Augusta engaged in the work of inspecting?

A. From Dec. 11, to Jan. 7th—.

Q. Less than a month?

A. Yes, sir.

Q. Where did this conversation occur with Capt. Carter that you have referred to?

A. On one of the jetties or dams that we were building.

Q. Who was present?

A. Albert Twiggs and I were talking there when Capt. Carter came up.

Q. Was Mr. Twiggs present,—did he hear it too?

924 A. No, sir.

Q. Just you and Capt. Carter?

A. Capt. Carter called me aside and asked about the matter.

Q. You had been less than a month at the work of inspector, and did not know the specifications?

A. No, sir, I didn't know them.

Q. Yet you undertook to tell him that Mr. Conant was not carrying them out properly?

A. No, sir, I did not say he was not carrying out the work properly.
Q. What do you mean to say?
A. I meant in some things he went to extremes.
Q. In other words, he was oppressing Mr. Twiggs, is that the idea?
A. He would have things done that were unnecessary, as I thought.
Q. Mr. Conant was your superior officer?
A. Yes, sir, of course, I had nothing to say to him about it.

ROBERT B. WOOLVIN, a witness for the prosecution, being duly sworn, testified as follows:

Questions by the Judge-Advocate.
Q. Where do you live?
A. I live at Abbeville, Ga.
Q. Where were you employed in the latter part of 1893?
A. I was assistant inspector of the contract work of Albert J. Twiggs, Augusta, Ga.
Q. How long were you so employed?
A. I was employed about three months; I went there about the first of Nov. and left about the first of Feb. or probably a few days afterwards.
Q. Were you employed by Mr. Twiggs or by Mr. Conant?
925 A. I was employed by Capt. Carter; I was in the employ of the Engineering Department.
Q. You were there as an inspector?
A. Yes, sir.
Q. Well, how was the work done, Mr. Woolvin?
A. Well, sir, according to my judgment, I think the work was done according to the contract.
Q. Were you furnished with a copy of the specifications?, —when you went there?
A. I looked over the specifications twice in Mr. Conant's room.
Q. He had a copy in his room and you went over them with Mr. Conant?
A. Yes, sir.
Q. As to the fascines, construction, length, etc.?
A. Yes, sir, the dimensions.
Q. Now when those fascines were brought to the point where they were to be used, did you inspect them there?
A. They were inspected on the barges and sometimes fas-

cines were brought up to the boat and piled up on the wharf and measured on the wharf?

Q. Did you do that work?

A. I have done some of it and Mr. Conant did some also.

Q. When the fascines were longer than the specifications called for, what action was taken?

A. I never cut off any fascines on the work.

Q. Did you ever find any that were too long?

A. I have seen a few too long.

Q. Did you ever find any that you yourself measured that were too long?

A. The fascines, the way they were piled up, was how we found out one end would project over, and that is the way they were measured.

926 Q. You never ordered any reduced in length?

A. No, sir.

Q. You never ordered any to be cut off?

A. No, sir.

Q. Were any ordered to be cut off to your knowledge?

A. Not to my knowledge, I have heard Mr. Hale speak about it; I didn't know anything about the orders; I don't know whether there were any orders concerning that or not.

Q. You know there was a supplemental contract made, don't you, with Mr. Twiggs?

A. Yes, sir.

Q. Did you remain while that was in force?

A. I was foreman on that part of the work.

Q. You were a foreman at that time?

A. I was placed on that part of the work as I suppose, foreman.

Q. How many inspectors were employed there under Capt. Carter, in superintending or inspecting the work done under that supplemental contract?

A. Well, there was no inspector except myself, Mr. Conant looked over that portion of the work as it went on.

Q. You were the only inspector besides Mr. Conant?

A. I was the only inspector on the part that the Government was doing, when they had taken a part from him.

Q. I am alluding to the inspectors, that their services had to be charged to Mr. Twiggs.

A. I don't know what were on duty at the brush camp, I don't know anything about them; I know only about the construction.

Q. You have referred only to the inspectors over the Government work, how many inspectors in addition were over Mr. Twiggs' work?

A. Two, Mr. Ford and Mr. Hale were there; that is about all I know that were sent up for inspectors.

927 Q. You saw the fascines, of course, that were used, being there as an inspector, had you seen any of the fascines that had been used on the improvements of two years previous, or the year previous?

A. The brush there on the shore protection had decayed, and you could not tell much about that; that's about the amount of that

Q. You had never seen any of the fascines as they were in their original condition?

A. No, sir, there was not any whole, I never saw any you could handle, though we repaired several of the dams.

Q. You never had seen any of the fresh ones?

A. No, sir.

Q. You went over the work where the old improvements had been made

A. Yes, sir, I have been over that work, I repaired some of it.

Q. Did you find any stakes in place?

A. I found some stakes.

Q. You had used stakes under the Twiggs' contract?

A. Yes, sir.

Q. How did they compare, those used on the Twiggs' contract, and those used in the ruins?

A. They didn't look so good, the stakes, as those used by Mr. Twiggs, from what I could see of them.

Q. How about the dimensions, were they as large?

A. Not as I could see. I remember one day Mr. Twiggs pulled up one that was placed in the shore protection; he taken it up with his hands; it was two inches in diameter, two and a half, maybe.

Q. At its smallest or largest end?

A. You might say the largest end.

Q. Two inches or two and a half?

A. Something about that.

Q. How long was it?

928 A. Twelve or fifteen in the ground and fifteen or eighteen inches above the ground.

Q. Did you take it in your hand?

A. I did not, Mr. Twiggs just pulled it out and showed it to me.

Q. How did he pull it out?

A. He just worked it with his hands.

Q. There was vigor enough left that he could work it loose without breaking it?

A. I judge it was 12 or 15 inches in the ground, something like that.

Q. How about the stakes used under the Twiggs' contract?

A. They were 5 or 6 feet in length, as well as I remember, that was what the specifications called for, 5 or 6 feet.

Q. How large were they at the taper end, the small end?

A. Well, they were about 3 inches, I suppose; that is what Mr. Conant told me to have the sizes, to receive them; that was my instruction; whether there was anything said about the diameter in the specifications, I don't remember.

Q. In relation to those pegs, you saw how mahy of those were left in place?

A. Those of the former work?

Q. Yes.

A. I don't know, I never noticed particularly. You would just see one now and then; I never noticed particularly about that. On top of the bank there were very few and of course, where the dams were submerged, you could not see any of them.

Q. This was on the shore protection those were used?

A. This was on the shore protection.

Q. Was there much brush, if any, around the one Mr. Twiggs pulled out?

A. There was brush in the dam, but it was so decayed that you could not tell anything about it; several freshets had passed over it, and it seemed as if it had been done several years ago

929 Q. I mean just in the vicinity of the spot where he pulled out the stake.

A. I never noticed that particularly; I could not well see, I never noticed about around the stake.

Cross-Examination.

Questions by Mr. Charlton.

Q. That was your first visit there as inspector?

A. That was my first visit there as inspector.

(Here the Court at 1.50 o'clock p. m. adjourned until tomorrow Feb. 2, 1898, at 11 o'clock a. m.)

THOMAS F. BARR,
Col. & Asst. Judge Adv. Genl
Judge Advocate.

930 United States Court Room,
Savannah, Ga.,
February 2nd, 1898.

Court met pursuant to its adjournment of yesterday at eleven o'clock a. m.

Present:

All the members of the Court and the Judge-Advocate.

The accused, his Counsel, and the Reporter, W. O. Tarver, were also present.

The President: The Court will come to order.

J. W. O. STERLY, a witness for the prosecution, previously sworn, recalled, testified as follows:

Direct Examination by the Judge-Advocate.

Q. You furnished from the office a statement of the final settlement with Mr. Twiggs under his contract, and subsequently a statement of the details of expenditures made on behalf of the Government and charged to him. I want you to show how the statement of expenditures was made up: Now, as to the contract work; look at the work done for the United States under the supplemental contract.

A. The total amount of work done by the United States under the supplemental contract, $3,912.81.

Q. How was that made out in detail?

A. 1549.52 cubic yards of Fascines at 74c, $1,146.54; 1589.75 cubic yards of stone at $1.74, $2,766.17.

Q. How was the charge for mileage made; take there the charge of $84.48?

A. Mileage for Capt. Carter, for traveling in connection with this work; there was eight vouchers,—no; four vouchers.

Q. For what amount and when?

A. Voucher No. 2, December, 1893, pay to Capt. O. M. Carter for mileage, $21.12, for traveling from Savannah to
931 Augusta and return, 27th and 28th of November. Voucher No. 3, 1893, mileage, pay to—

Q. What month?

A. Traveling on the 9th of December to the 10th of December, from Savannah to Augusta and return, $21.12, pay to Capt. O. M. Carter. Voucher No. 19, January, 1894, mileage, $21.12, fro travelling from Savannah to Augusta and return, January 5th to January 10th, pay to Capt. O. M. Carter. Voucher No. 16, February, 1894, mileage, pay to Capt. O. M. Carter, $21.12, for traveling from Savannah to Augusta and return, 5th of February to 7th of February, 1894.

Q. Please state how the aggregate of the charge for traveling expenses, $94.22, was made up?

A. Voucher No. 7, December, 1893, pay to R. B. Woolvin, Inspector, traveling expenses, $14.16; for Traveling from Abbeville, Ga., to Augusta, Ga., via Savannah, on Nov. 1st to 4th, 1893/ Voucher No. 6, January, 1894, pay to E. R. Conant, Inspector, for traveling expenses, $10.87, for traveling from Augusta to Savannah and return, December 1st to 2nd, 1893. Voucher No. 8, January, 1894, pay to Campbell Ford, Foreman, traveling expenses, $10.96, for traveling Savannah to Augusta, Dec. 11th to 13th, 1893. Voucher No. 15, January, 1894, pay to S. M. Hale, Inspector, traveling expenses, $10.96, Savannah to Augusta, December 11th to 13th, 1893. Voucher No. 18 pay to S. M. Hale, Inspector, for traveling expenses $6.51, traveling from Augusta to Savannah on January 6th and 7th 1894. Voucher No. 24, January, 1894, pay to E. R. Conant, Inspector, traveling expenses, $10/42, for traveling from Savannah to Augusta and return on the 30th of December, 1893. Voucher No. 23, February, 1894, pay to E. R. Conant, Inspector, traveling expenses, $12.42, for traveling from Augusta to Savannah and return on January 20th to 21st, 1894. Voucher No. 24, February, 1894 pay to E. R. Conant, Inspector, traveling expenses, $8.96, traveling from Augusta, Ga., to Savannah, February 11th to 13th, 1894. Voucher No. 25, February, 1894, pay 932 to Campbell Ford, Inspector, traveling expenses, $8.96, traveling Augusta to Savannah, Feb'y 11th to 13th, 1894.

Q. How many vouchers did the office rent at Augusta require?

A. Four vouchers.

Q. What amounts?

A. Voucher No. 6, December, 1893, Planters Hotel Co.,

office rent, $12.00. Only a part of this voucher, $8.80, is charged to this account.

Q. Part of the time, then, wasn't covered by the supplemental contract?

A. No, sir; from the 20th of October 1893, until the end of that month.

Mr. Rose: That was 16 days extension.

Judge-Advocate: Well, the whole month isn't charged, I understand from the witness.

Q. Did I so understand you, Mr. Sterly?

A. Yes, sir; this deduction starts from the 20th of October, 1893, when the second extension commenced.

Q. Yes; commenced with the second extension?

A. With the second extension.

Q. That was sometime before the supplemental contract went into effect?

A. 16 days. Voucher No. 12, January, 1894, Planters Hotel Co., office rent, $12.00, for the month of December, 1893. Voucher No. 22, February, 1894, Planters Hotel Co., office rent for the month of January, 1894, $12.00. Voucher No. 3, November, 1893, Planters Hotel Co., office rent, $12.00, for the month of October, 1893.

Q. You have read that October one, have you not?

A. Yes, sir: I just see that there is an error in the original statement. These vouchers have been deducted from the payment. This Voucher No. 6 was for the full month of
933 November, and I gave that as for October.

Q. You will have to rectify it with the reporter?

A. I read Voucher No. 6, December, 1893, as being payment for October. It should have been voucher No. 3, November, 1893, and Voucher No. 6 is for office rent for November, 1893.

Q. Now, how is the item of pay-rolls, laborers, $2,558.63 made out?

A. The pay-rolls for laborers as follows: Voucher No. 4, December, 1893, payroll for December, $448.30.

Q. What is the next one?

A. Voucher No. 1, January, 1894, $511.88, payroll for December, 1893. There are several payrolls for one month.

Judge-Advocate: I call the attention of Counsel to the fact that, on this pay-roll, the rate of pay for the laborers is stated at from $1.50 to 75c per day, the largest amount

appearing on the first page being $14.25; the largest amount on the second page being $8.25; the largest amount on the 4th page being for labor with team $20.00; the largest amount on the last page $42.75, labor with team, Geo. H. Kehrnigan.

Q. What is the next?

A. Voucher No. 4, 1894, payroll for first ten days in January, $559.76.

Q. What is the next one?

A. Voucher No. 21, January, 1894, for the second ten days in January, 1894, $495.69. Voucher No. 2, February, 1894, for the last ten days in January, $365.32.

Judge-Advocate: I call the attention of the Court to the fact that upon the last page of that payroll appears the name of W. R. Stafford, blacksmith, who is paid for 2 days, 29th to 30th, inclusive, at $2.00 a day, $4.00.

Q. What is the next one?

A. Voucher No. 19, February, 1894, $167.40, for Feb. 1st to 15, 1894.

Q. Now, the vouchers as to telegrams?

A. Voucher No. 13, February, 1894, Western Union 934 Telegraph Co., telegrams, $5.14.

Q. How much?

A. $4.54; 60c of this account is previous to the second extension.

Q. Now as to the superintendence of the work? which aggregated $1,067.67; how was that made up?

A. Voucher No. 1, December, 1893, payroll for November, $220.00.

Q. Who was the party, and what for?

A. I should have stated another voucher first. This was for services of E. R. Conant, Inspector, R. B. Woolvin, Inspector and Geo. Barnum, Boatman, $220.00 for services in November, 1893.

Q. What is the next one you find there?

A. Voucher No. 1, November, 1893, payroll for October, 1893, $130.00. 11 days of this are charged to Mr. Twiggs, $47.67,—E. R. Conant, Inspector, and Geo. Barnum, Boatman. The next one is Voucher No. 2, January, 1894, payroll for December, 1893, $359.00, E. R. Conant, S. M. Hale, R. B. Woolvin, Campbell Ford, Gus. Collier and George Barnum.

Q. How much for each?

A. E. R. Conant, $100.00; S. M. Hale, $60.00; R. B. Woolvin, $90,00; Campbell Ford, $60.00; Gus. Collier, $20.00; George Barnum, $29.00

Q. Go to the next one?

A. Voucher No. 36, January, 1894, S. M. Hale, services, $72.00, $21.00 charged to Mr. Twiggs. Voucher No. 3, February, 1894, payroll for January, 1894, $280.00, Conant, Woolvin and Ford,—$100.00 to Conant, $90.00 to Woolvin and $90.00 to Ford. Voucher No. 18, February, 1894, $140.00, Conant $50.00,—Woolvin $45.00 and Ford $45.00. This is for half of the month of February.

Q. That was the completion of the work?

A. Yes, sir.

Q. Now you may take up the vouchers for material and read them one after another, the aggregate being $2,878.01.

A. Voucher No. 5, December, 1893, Andrew Hanley, Oakum, $4.50; voucher No. 5, January, 1894, Augusta 935 Hardware Co., Sundries, $49.00; voucher No. 7, January, 1894, J. T. Butler, brush and poles, $30.00; voucher No. 9, January, 1894, E. D. Reese, Broken Stone, $719.29; voucher No. 10, January, 1894, John J. Evans, Sundries, $71.42; voucher No. 11, January, 1894, Geo. R. Lombard & Co., Bolts, Pins, Washers, etc., $9.88; voucher No. 13, January, 1894, Perkins Mfg. Co., Lumber, $80.06; voucher No. 14, January, 1894, Z. T. Keener, bateau and paddles, $9.00; voucher No. 16, January, 1894, W. R. Stafford, Sundries, $31.15; voucher No. 17, January, 1894, J. M. Landrum, brush and poles, $25.00; voucher No. 29, January, 1894, N Paulsen, Rope and Anchor, $53.77; voucher No. 21, February, 1894, E. D. Reese, broken stone, $1,665.34; voucher No. 31, February, 1894 Ephraim Tweedy, Brush, $15.00; voucher No. 34, February, 1894, G. R. Landrum, Brush, $15.00; voucher No. 32, February, 1894, John J. Evans, Sundries, $38.13—

The Court: Upon that voucher, see what those sundries may be charged as.

Witness: It is dated Augusta, Ga., Jan. 31, 1894, 1 water bucket 15c, 1 doz. shovels, $3.25—

The Court: That is enough.

Witness continuing: Voucher No. 43, February, 1894, Maurice Walton Wire, $27.87; voucher No. 33, Feb., 1894, B. W. Fair, Poles, $33.60.

Q. The next item is a charge for office expenses, Savannah, $483.82; how do you make out that statement?

A. Voucher No. 7, October, 1893, payroll for October, 1893, $335.00, 11 days charged to Mr. Twiggs, $122.83,—M. A. Connolly, Julius H. Grundel and James Green. Voucher No. 5, November, 1893, payroll for November, 1893, $185.00; one half of the month charged to Mr. Twiggs,—M. A. Connelly $150.00, James Green $35.00. $185.00 is the total of the payroll, and half of that is charged to Mr. Twiggs. Voucher No. 9, December, 1893, J. W. O. Sterly, services, for Dec. 16th to 31st inclusive, $87.50. Voucher No. 35, January, 1894, M. A. Connolly. $150.00 for services during the month of Janu-
936 ary, 1894.

Q. What work was Mr. Connolly engaged upon during that month of January?

A. He was employed as a clerk in the office.

Q. What doing?

A. Checking reports, writing, indexing, and filing letters, and reports.

Q. What work was he doing in that month which he had not been doing in any other month?

A. He was doing the same work he always did.

Q. What work, to your knowledge, did he do in connection with the Twiggs contract.

A. In connection with the Twiggs contract, he did the same work,—checking the reports as they came in every ten days. He checked the amounts, stamped them, and filed them away; that is, the reports. Then he had to write the letters, copy the letters, send them away, and brief the incoming letters.

Q. Was he engaged on any other work during that month? than the Twiggs contract?

A. Yes, sir; his regular routine office work.

Q. What was his salary?

A. $150.00.

Q. Now I see in one month one half of your salary is charged to Mr. Twiggs; that is in December, 15 days, $87.50; how much of that time did you devote to the Twiggs contract?

A. I don't know how to answer that question. If the work came in—It did not come in at one time. Just how much I worked during that one month for Mr. Twiggs, I could not say.

Q. What other work was going on in this engineering district at that time?

A. Work in Savannah Harbor,—dredging and jetty work.

Q. Two different contracts?

A. Yes, sir; then there was snagging operations on
937 the Ocmulgee and Oconee Rivers, and I cannot very well single out just how much time I would have devoted to one particular part of them.

Q. Did you ever have to work over hours?

A. I never keep myself down to office hours strictly.

Q. Was there any increase of force during the time of the work done under the Twiggs contract?

A. The same office force.

Q. Was there any reduction of force immediately after the Twiggs contract had expired?

A. No, sir; but a few months afterwards—

Q. I mean immediately afterwards?

A. No, sir.

Q. I see the name of Green down here, once for eleven days and once for fifteen; who is Green?

A. Messenger in the office.

Q. They charged 11 days in October and 15 days in November for messenger service?

A. Yes, sir.

Q. There has always been a messenger in the office?

A. Yes, sir.

Q. He wasn't employed especially because of the Twiggs contract?

A. No, sir.

Q. Give me G. R. 58 of 1890; what is that?

A. Letter from the Chief of Engineers under date of September 20th, 1890, notifying Capt. Carter of the passage of the River and Harbor Bill on September 19th, 1890, and requests him to submit projects for the expenditure.

Q. Give me S. R. page 33?

A. October 6th, 1890, Capt. Carter submits project of expenditure, for $25,000.00 appropriated by Act of Congress for improving the Savannah River between Augusta and Savannah.

Q. S. R. 16?

A. S. R. 16 is a letter from the Chief of Engineers,

938 dated Oct. 13, 1890 notifying Capt: Carter that he approves project for Savannah River between Augusta and Savannah.

Q. That was October 13th, 1890, do I understand?

A. 1890.

Q. What date did you find when the specifications were submitted and request for authority to print forwarded?

A. July 1st, 1891.

Q. Under what date did you find that authority to advertise was given?

A. Under date of July 8, 1891.

Q. When was that authority received in the engineer office here?

A. July 13, 1891.

Q. What was the date of the advertisement on the specifications?

A. July 1st, 1891.

Q. When were bids to be opened?

A. On the 1st of August, 1891.

Q. What was the date of the first issue of specifications?

A. July 20, 1891.

Q. In what papers was the advertisement inserted, when and how often? Page 147.

A. Chronicle, Augusta, Ga., July 16, 18 and 25. 1891; Morning News, Savannah, Ga., July 16, 18 and 25, 1891; Engineering Record, New York, July 18, 1891; Engineering News, New York, July 18, 1891.

The following papers were identified by the witness, and offered in evidence and read by the Judge-Advocate:

File S. R. 20, 1891.

"Wilmington, N. C., July 18, 1891.

"Capt. O. M. Carter,
Corps of Engineers, U. S. Army.

"Dear Sir:

"Please send me specifications for repairing and constructing wing dams and shore protection to the Savan-
939 nah River below Augusta, Ga.

Oblige,
Yours truly,

LOUIS L. HANBY."

P. O. Box 72

S. R. Letter Book, 1891, page 126.
United States Engineer Office,
Savannah, Ga., July 20, 1891.

"Mr. Louis L. Hanby,
P. O. Box 72,
Wilmington, North Carolina.

Sir:

I enclose herewith one copy of specifications for Savannah River work. Should you decide to bid upon the same, two more copies will be sent you upon application.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt., Corps of Engrs. U. S. A."

File S. R. 21, 1891.
"Wilmington, N. C., July 21, 1891.

"Capt. O. M. Carter,
Savannah Ga.

Sir:

As I expect to bid on the Savannah River work, you will please mail me two more copies of the specifications and oblige,

Yours truly,
LOUIS L. HANBY."

S. R. Letter Book, 1891, page 130
United States Engineer Office,
Savannah, Ga., July 22, 1891.

Mr. Louis L. Hanby,
Wilmington?, N. C.
940 Dear Sir:

In reply to your request of the 21st inst., there are sent you herewith, two more copies of specifications for Savannah River work.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt., Corps of Engrs. U. S. A."

File S. R. 22, 1891.
The Maryland Granite Company,
The Rocks, Md., July 18, 1891.

Capt. O. M. Carter,
Corps of Engineers, U. S. A.,
Savannah, Ga.

Dear Sir:

Will you please furnish us the information and blank forms to enable us to bid for repairing and constructing wing dams and shore protections to the Savannah River below Augusta, Georgia, and oblige,

Yours respectfully,
THE MARYLAND GRANITE CO.,
W. B. SPRAGUE,
Manager.

S. R. Letter Book, 1891, page 129.
United States Engineer Office,
Savannah, Ga., July 22nd, 1891.

Mr. W. B. Sprague,
G. M. Maryland Granite Co.,
The Rocks, Md.

Sir:

There is sent to you with this, one copy of specifications for work in Savannah River, below Augusta, Ga. Should
941 you deside to bid upon the work, two more copies will be sent you upon your application.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. Corps of Engrs., U. S. A,

File S. R. 23, 1891.
A. J. Twiggs,
Consulting Engineer and General Contractor,
P. O. Box 195,
Augusta, Ga., July 23, 1891.

Capt. O. M. Carter,
Savannah, Ga.

Dear Captain:

One copy of the specifications for the Savannah River work below Augusta rec'd. I would like to make a bid for the work. Please send me two more copies, and oblige,

Yours very truly,
A. J. TWIGGS.

Letter Book S. R., 1891, page 134.
United States Engineer Office,
Savannah Ga., July 25, 1891.

Mr. A. J. Twiggs,
Post Office Box 195,
Augusta Ga.

Sir:

In compliance with your request of the 23rd inst., there are sent to you herewith, two more copies of specifications for Savannah River work.

You will please notice that the bids will be opened at this office at 12. o'clock M., city time, instead of in New York.

942

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt., Corps of Engrs., U. S. A.

Q. (continuing examination) Did you find any entry in the books indicating a written application by Mr. Twiggs for the one copy of the specifications which he refers to as having received?

A. There is a letter sent to him on page 127.

The Judge-Advocate continued to offer in evidence, and read papers identified by the witness as follows:

S. R. Letter Book, 1891, page 127.
United States Engineer Office,
Savannah, Ga., July 20, 1891.

Mr. A. J. Twiggs,
No. 427 6th St., Augusta, Ga.

Sir:

I enclose herewith one copy of specifications for Savannah River Work. Should you decide to bid upon the same, two more copies will be sent you upon application.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt., Corps of Engineers, U. S. A.

Judge-Advocate: There is no record that he had made a written application for that.

File S. R. 24, 1891.

Office of
J. Friday, Contractor,
Pittsburgh, Pa., July 20, 1891.

O. M. Carter,
943 Capt., Corps of Engineers, U. S. A.,
Savannah, Ga.

Dear Sir:

Please send me the specifications and all papers necessary for proposal for repairing and constructing wing dams and shore protection in the Savannah River below Augusta, Ga.,

JACOB FRIDAY,
Contractor on Charleston Jetties.

P. S.—Please address the papers to me care of the Arlington Hotel, Augusta, Ga., and oblige.

J. F.

S. R. Letter Book, 1891, page 132.

United States Engineer Office,
Savannah, Ga., July 24, 1891.

Mr. J. Friday,
Arlington Hotel,
Augusta, Ga.

Dear Sir:

I send you herewith one copy of specifications for Savannah River work. If you decide to bid upon the same, two more copies will be sent you upon application.

Yours truly,
O. M. CARTER,
Capt., Corps of Engrs., U. S. A.

File S. R. 26, 1891.

Grand Union Hotel,
Wilmington, Del., July 24, 1891.

O. M. Carter,
Capt., Corps Engineers, U. S. Army,

Dear Sir:

Please forward me copy of specifications and form of
944 proposal for repairing and constructing wing dams and shore protection in the Savannah River below Augusta, Ga., and oblige,

Yours respectfully,
M. D. McISAAC.

Judge-Advocate: With this communication of the same date:

Wilmington, Del., July 24, 1891.

O. M. Carter,
Capt., Corps of Engineers.

Dear Sir:

Will you please send me a copy of specifications and form of proposals for repairing and constructing wing dams and shore protection in the Savannah River below Augusta, Ga., and oblige,

Yours truly,
M. D. McIsaacs,
Grand Union Hotel,
Wilmington, Del.

S. R. Letter Book, 1891, page 137.
United States Engineer Office,
Savannah, Ga., July 28th, 1891.

Mr. W. D. McIsaacs,
Grand Union Hotel,
Wilmington, Del.

Sir:

In compliance with request contained in your letter of the 24th inst., there are sent to you herewith, one set of specifications for work of repairing and constructing wing-dams and shore protection in the Savannah River below Augusta, Ga.

You will please note that the bids will be opened at this office at 12 o'clock M., city time, on the first day of August, and not in New York.

Very respectfully,
Your obedient servant,
O. M. Carter,
Capt., Corps of Engrs., U. S. A.

945 File S. R. 27, 1891.

July 25th, 1891.

Capt. O. M. Carter,
Corps of Engrs., U. S. A.,
Savannah, Ga.

Dear Sir:

I received one copy of specification, etc., for the Savannah River work. Will you kindly send me the other two copies

to Charleston, S. C., as I intend to make a proposition for this work.

Yours respectfully,
J. FRIDAY,
Charleston Hotel.

Letter Book S. R., 1891, page 139.
United States Engineer Office,
Savannah, Ga., July 28, 1891.

Mr. J. Friday,
Charleston Hotel,
Charleston, S. C.

Sir:

In compliance with your request of the 25th inst., two more copies of specifications for Savannah River work are sent you herewith.

You will please note that the bids will be opened at this office at 12 o'clock M., city time, on the first day of August, and not in New York.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt., Corps of Engrs., U. S. A.

Judge-Advocate: That is the last of the written applications for specifications. (And continues to offer in evidence papers identified by the witness, as follows:)

946 S. R. Letter Book, 1891, page 131.
United States Engineer Office,
Savannah, Ga., July 21, 1891.

Mr. John F. Gaynor,
Fayetteville, N. Y.

Sir:

In compliance with your request, there is sent to you today one set of specifications relating to the works in Savannah River, below Augusta.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt., Corps of Engrs., U. S. A.

S. R. Letter Book, 1891, page 135.
United States Engineer Office,
Savannah, Ga., July 25, 1891.

Mr. F. M. Jones,
Savannah, Ga.

Sir:

In accordance with your request, there is handed to you herewith, one copy of specifications for work to be done in Savannah River, below Augusta, Ga., with the information that should you decide to put in a bid, two more copies of specifications will be sent you or given to you upon application.

Very respectfully,
Your obedient servant,
O. M. Ccrter,
Capt., Corps of Engrs., U. S. A.

S. R. Letter Book, 1891, page 136.
United States Engineer Office,
Savannah, Ga., July 25, 1891.

947 Mr. Samuel R. Adams,
Camden, S. C.

Sir:

In accordance with your request, there is handed you herewith, one copy of specifications for work contemplated in Savannah River, below Augusta, Ga., with the information that should you decide to put in a bid on this work, two more copies of the specifications will be given or sent you upon application.

Very respectfully,
Your obedient servant,
O. M. Carter,
Capt., Corps of Engrs., U. S. A.

Q. Now have you the abstract of bids there?

A. (Witness handed Judge-Advocate the papers called for)

Judge-Advocate: I offer in evidence and read the abstract of proposals, with a letter from Capt. Carter to the Chief of Engineers as follows:

"United States Engineer Office,
"Savannah, Ga., August 1, 1891.

"The Chief of Engineers, U. S. Army,
Washington, D. C.

General:—

I have the honor to transmit herewith, all proposals received for repairing and constructing wing dams and shore protection in Savannah River, below Augusta, Ga., and to recommend the acceptance of the bid of John F. Gaynor, Fayetteville, N. Y., he being the lowest responsible bidder.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt., Corps of Engineers, U. S. A."

"Abstract of Proposals for Construction and Repairing 948 Wing-dams and Shore Protection in the Savannah River, below Augusta, Georgia, opened on August 1, 1891, by Capt. O. M. Carter, Corps of Engineers, U. S. Army.

Jacob Friday, Charleston, S. C., bid on mattresses, $1.61 per cubic yard and on stone, $3.15 per cubic yard; Samuel W. Skinner and Thomas E. Wallace, Wilmington, N. C., bid on mattresses $2.10 per cubic yard and on stone $3.10 per cubic yard; John F. Gaynor, Fayetteville, N. Y., bid on mattresses $1.29 per cubic yard and on stone, $2.69 per cubic yard.

"Amount available, about $15,000. Bid recommended for acceptance, he being the lowest responsible bidder for the best and most suitable services," with a mark against this and against the name of John F. Gaynor.

"I hereby certify that the above Abstract of Proposals is correct.

O. M. CARTER,
Capt., Corps of Engrs., U. S. A.,
Savannah, Ga., August 1, 1891."

Q. (Continuing examination) Do you know when work began under this contract?

A. Work began on the 5th of October, 1891.

Q. Do you know when it was closed?

A. On 20th November, 1891.

Q. Do you know when the Gaynor contract in Savannah Harbor was closed in the year 1891?

A. On August 11, 1891.

Q. Have you the proposals and contract there for this work?

A. (Witness handed Judge-Advocate papers called for)

Judge-Advocate: I offer in evidence the proposals referred to in the abstract, together with contract entered into with John F. Gaynor, and the Contractor's bond to accompany the contract. Copies will be attached to the record marked Exhibits 66, 67, 68 and 69.

949 I also offer the contractor's bond, John F. Gaynor as principal and B. D. Green and Thomas F. Gaynor as sureties in the penal sum of $10,000, for the faithful performance of the contract: Copy of this will be attached to the record marked Exhibit No. 70.

Q. Now give me S. R. 13, 1892?

A. That is the River and Harbor Bill.

Q. What year?

A. July 13th, 1892, appropriating money for the Rivers and Harbors.

Q. Give me the date of submitting project of expenditure in relation to Savannah River above Augusta?

A. July 27, 1892.

Q. Give me the date of approval of the project?

A. August 8, 1892.

Q. Give me the date of submitting the specifications and request for authority to advertise?

A. August 18, 1892.

Q. Give me the date of Authority to advertise,—to print specifications and to advertise?

A. August 25th, 1892.

Q. What was the date of the advertisement on the specifications?

A. August 18, 1892.

Q. And published with that date of August 18, 1892?

A. Yes, sir.

Q. What was to be the date of the opening of the bids?

A. September 19, 1892.

Q. What was the date of the first issue of specifications?

A. September 3, 1892.

Q. In what papers did the advertisement appear and for how many times?

A. Savannah Morning News six times, August 31, Sept. 1, 2, 3, 16 and 17, 1892.

Q. The same dates in the News & Courier of Charles-950 ton and in the Times-Union of Jacksonville?

A. Yes, sir.

Q. How often in the Engineering News, New York?

A. September 1st, 8th and 15th, 1892.

Q. Marine Journal, New York?

A. September 3, 10 and 17, 1892.

Q. How many specifications were printed?

A. 200.

Q. How many were sent to the Chief of Engineers?

A. 125 copies.

Q. Leaving 75 copies in the office?

A. Yes, sir.

Q. How many copies of those specifications are now on hand?

A. About 35.

Q. When did you count them?

A. A few days ago.

Q. Within a few days there were 35 left?

A. Yes, sir.

Q. And these specifications were printed and issued in 1892?

A. Yes, sir.

The following papers identified by the witness were offered in evidence and read by the Judge-Advocate:

File S. R. above, 3, 1892.
Stewart Stone Company,
Columbia, S. C., 3rd Sept., 1892.

Capt. O. M. Carter,
U. S. Engineer Office,
Savannah, Ga.

Dear Sir:

Please send specification for the work to be done under you in Augusta, Ga., and oblige.

Respectfully yours,
STEWART STONE CO.,
A. R. STEWART,
Gen. Mang.

951 S. R. Letter book, above, 1892, page 16.

United States Engineer Office,
Savannah, Ga., Sept. 6, 1892.

Mr. A. R. Stewart,
G. M. Stewart Stone Co.,
Columbia, S. C.

Sir:

In compliance with request contained in your letter of the 3rd instant, one copy of the specifications for improving the Savannah River, above Augusta, Georgia, is sent you herewith. Please consider the specifications carefully, and if you desire to bid upon the work, I shall take pleasure in showing you over the same, giving you all the available information concerning it and furnishing you with the two remaining copies of the specifications necessary to enable you to submit your bid. If you do not intend to bid, please return the enclosed specifications.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt., Corps of Engrs., U. S. A.

File S. R. above, No. 4, 1892.

A. J. Twiggs,
Consulting Engineer and General Contractor,
Augusta, Ga., Sept., 1892.

Capt. O. M. Carter,
U. S. Engineer, Savannah, Ga.

Dear Sir:

Will you please send me specifications, &c, for the improvement of the Upper Savannah River, and oblige,

Yours very truly,
A. J. TWIGGS.

952 Letter Book S. R. above, 1892, page 15.

United States Engineer Office,
Savannah, Ga., Sept. 6, 1892.

Mr. A. J. Twiggs,
P. O. Box 195, Augusta, Ga.

Sir:

In compliance with request contained in letter received from you this morning (no date), one copy of the specifications for improving the Savannah River, above Augusta, Ga., is sent you herewith. Please consider the specifications care-

fully, and if you desire to bid upon the work, I shall take pleasure in showing you over the same, giving you all the available information concerning it and furnishing you with the two remaining copies of the specifications necessary to enable you to submit your bid. If you do not intend to bid, please return the enclosed specifications.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt., Corps of Engrs., U. S. A.

File S. R. above No. 5, 1892.
Telegram.

Pittsburg, Pa. 6.

To Capt. O. M. Carter,
Capt. U. S. Engineers, Savannah, Ga.

Send me at once specifications for work above Augusta addressed Peter Siebert, Haysville, Penna.

PETER SIEBERT.

Letter Book, S. R. above, 1892, page 14.
United States Engineer Office,
Savannah, Ga., Sept. 6th, 1892.

Mr. Peter Siebert,
Haysville, Pa.

953 Sir:

In compliance with request contained in your telegram of current date, one copy of the specifications for improving the Savannah River, above Augusta, Georgia, is sent you herewith. Please consider the specifications carefully, and if you desire to bid upon the work I shall take pleasure in showing you over the same, giving you all the available information concerning it and furnishing you with the two remaining copies of the specifications necessary to enable you to submit your bid. If you do not intend to bid, please return the enclosed specifications.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt., Corps of Engrs., U. S. A.

File S. R. above 6, 1892.
Telegram.

Pittsburg, Pa. 6.

O. M. Carter,
U. S. Engineer, Savannah, Ga.
Please mail without delay specifications for Augusta work.

THOMAS FOLEY,
102 *Water Street.*

S. R. above Letter Book, 1892, page 13.
United States Engineer Office,
Savannah, Ga., Sept. 6, 1892.

Mr Thomas Foley,
102 Water St.,
Pittsburg, Pa.

Sir:

In compliance with request contained in your telegram 954 of current date, one copy of the specifications for improving the Savannah River above Augusta, Georgia, is sent you herewith. Please consider the specifications carefully, and if you desire to bid upon the work, I shall take pleasure in showing you over the same, giving you all the available information concerning it and furnishing you with the two remaining copies of the specifications necessary to enable you to submit your bid. If you do not intend to bid, please return the enclosed specifications,

Very respectfully,
Your obedient servant,

O. M. CARTER,
Capt., Corps of Engrs., U. S. A.

File S. R. above 7, 1892.
Telegram.

Pittsburg, Pa., Sept. 6.

To O. M. Carter,
Capt., U. S. Engrs., Savannah, Ga.
Mail me specifications of Augusta work to Harrisburg, Pa., at once.

E. J. HUFFMAN.

S. R. above letter book, 1892, page 17.
United States Engineer Office,
Savannah, Ga., Sept. 7, 1892.

Mr. E. J. Huffman,
Harrisburg, Pa.

Sir:

In compliance with request contained in your telegram of 6th inst one copy of the specifications for improving the Savannah River, above Augusta, Georgia, is sent you herewith. Please consider the specifications carefully, and if you desire to bid upon the work I shall take pleasure in showing you over the same, giving you all the available information concerning it and furnishing you with the two remaining copies of the specifications necessary to enable you to submit your bid. If you do not intend to bid, please return the enclosed specifications.

955

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt., Corps of Engrs., U. S. A.

File S. R. above, 8, 1892.
Telegram.
Pittsburg, Pa., 6.

To O. M. Carter,
Capt. Engineers.

Send specifications for work above to 5th and Croft Ave.
GEO. W. THIES,
Agent.

S. R. above letter book, 1892, page 18.
United States Engineer Office,
Savannah, Ga., Sept. 7, 1892.

Mr. Geo. W. Thies, Agent,
5th and Craft Ave., Pittsburg, Pa.

In compliance with request contained in your telegram of the 6th inst., one copy of the specifications for improving the Savannah River, above Augusta, Georgia, is sent you herewith. Please consider the specifications carefully, and if you desire to bid upon the work, I shall take pleasure in showing you over the same, giving you all the available information concerning it and furnishing you with the two remaining copies of the specifications necessary to enable you

to submit your bid. If you do not intend to bid, please return the enclosed specifications.

Very respectfully,

956 Your obedient servant,

O. M. CARTER,
Capt. Corps of Engrs., U. S. A.

File S. R. above 9, 1892.

A. J. Twiggs,
Consulting Engineer and General Contractor,
Augusta, Ga., Sept. 7, 1892.

Capt. O. M. Carter,
U. S. Engineer,
Savannah, Ga.

Dear Sir:

Yours of the 6th inst., enclosing specifications for the improvement of the Savannah River above Augusta, received. I desire to bid on this work, and will be glad to get all the necessary information as early as possible. I would like to go over the work, and if you have any one that you wish to send over it, I can send a boat up the R. R. and have it hauled over to the River, and have two men come down with us. The trip can be made down the river in one day. Please let me hear from you, and abolige,

Yours very truly,

A. J. TWIGGS.

P. S.—I have on hand a good supply of work tools, steam drills, etc, having just finished a stone contract.

A. J. T.

S. R. above letter book, 1892, page 19.

United States Engineer Office,
Savannah, Ga. Sept. 8, 1892.

Mr. A. J. Twiggs,
P. O. Box 195,
Augusta, Ga.

Sir:

In compliance with your request of the 7th inst., I
957 transmit herewith two additional copies of the specifications for improving the Savannah River, about Augusta, Georgia.

I regret that important engagements will prevent my leaving Savannah at present; but if there is any information con-

cerning any of the work, which you desire, please let me know, and I shall take pleasure in giving it to you.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt., Corps of Engrs., U. S. A.

File S. R. above 10, 1892.

A. J. Twiggs,
Consulting Engineer and General Contractor,
Augusta, Ga., Sept. 10, 1892.

Capt. O. M. Carter,
Savannah, Ga.

Dear Sir:

Yours of the 8th inst., with two enclosures, received. I want to take a trip over the upper Savannah next week, and would like to know, if possible, the points at which the work is to be done. Can you give me this information? or would it be best for me to go to Savannah and see your personally?

Yours very truly,
A. J. TWIGGS.

S. R. above letter book, 1892, page 21.

United States Engineer Office,
Savannah, Ga., Sept. 12, 1892.

Mr. A. J. Twiggs,
P. O. Box 195, Augusta, Ga.

Dear Sir:

Replying to your letter of the 10th inst, I regret to in-
958 form you that I shall not be able to make the trip over the upper Savannah River with you this week; but if you will come to this office, I can show you on our detailed maps here where the work is to be done. If you have been over the River, this will, perhaps, be of value to you, and more so than a second trip over the same.

Very truly yours,
O. M. CARTER,
Capt., Corps of Engrs., U. S.A.

File S. H. 68, 1892.

Jacksonville, Fla., Sept. 6, 1892.

Capt. O. M. Carter,
U. S. Engr. Corps, Savannah, Ga.

Dear Sir:

Will you please send me specifications and papers requisite for bidding on all work under your jurisdiction, and oblige,

Yours very truly,

R. G. Ross.

S. R. above letter book, 1892, page 20.

Savannah, Ga., Sept. 8, 1892.

Mr. R. G. Ross,
Jacksonville, Fla.

Sir:

In compliance with your request of the 6th instant - - - - I herewith enclose one copy of specifications for - - - - - Improving Savannah River above Augusta, Ga.

- -

For original letter see Savannah Harbor Book.

Judge-Advocate: That seems not to have been written on official paper. "United States Engineer Office" does not appear.

Q. Now, have you that original letter?

A. No, sir; I have not.

959 Mr. Rose: It was copied by mistake in the wrong book.

Judge-Advocate: No; it is an extract evidently.

Witness: It is an extract.

Judge-Advocate: That contains the gist of the response. One copy of the specifications for improving the Savannah River above Augusta was sent him with a communication of which this appears to have been a partial copy. That ends all the instances in which specifications were sent in response to a written application.

Q. How many were issued in response to oral applications?

A. Three copies.

Q. To whom?

A. John F. Gaynor. The letter is copied on page 12.

Judge-Advocate: I offer in evidence and read this letter:

United States Engineer Office,
Savannah, Ga., Sept. 3, 1892.

Col. John F. Gaynor,
Fayetteville, N. Y.

Sir:

In compliance with your verbal request of yesterday, there is sent you herewith one complete set of specifications for the work of improving the Savannah River above Augusta, Ga.

Very respectively,
Your obedient servant,
O. M. CARTER,
Capt., Corps of Engrs., U. S. A.

Q. When did work begin on this contract?
A. Work began on Oct. 14, 1892.
Q. When was it closed?
A. June 26, 1893.
Q. Do you know when the work was suspended?
A. From the 15th of November, 1892, to the 12th of June, 1893.
Q. Those are the facts as they appear from the official
960 records of the office?
A. Yes, sir.
Q. Does any record appear of any specifications having been sent to W. H. Walsh?
A. No, sir.
Q. Have you the letter from Capt. Carter transmitting the bids,—the abstract of proposals?
A. Yes, sir (Handing Judge-Advocate papers called for).
Judge-Advocate: I offer in evidence and read:

United States Engineer Office,
Savannah, Ga., Sept. 19, 1892.

"Brig. Gen. Thomas L. Casey,
Chief of Engineers, U. S. A.,
Washington, D. C.

General:

I have the honor to transmit herewith all proposals received for improving Savannah River, about Augusta, Georgia, with abstract of same, and authority is requested to award the contract to Wm. H. Walsh, the lowest responsible bidder, the prices being deemed reasonable.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt., Corps of Engrs., U. S. A.

Judge-Advocate: The Abstract referred to is as follows: "Improving Savannah River, Georgia, above Augusta, opened September 19, 1892, by Capt. O. M. Carter, Corps of Engrs., U. S. Army"

Marion Applegate, Haysville, Pa, bid for rock excavation, 1,000 cub. yards, $4.60, amounting to $4.600; for fascines, 1,500 cubic yards, $1.60, amounting to $2,400; riprap stone, 1,000 cubic yards, $2.45, amlunting to $2,450; clearing river bank 20 miles, $65.00, amounting to $1,300; total, $10,-961 750. Wm. H. Walsh, Fernandina, Fla., bid on rock excavation, 1,000 cubic yards, $4.25, amounting to $4,250; for fascines, 1,500 cubic yards, $1.50, amounting to $2,250; for riprap stone, 1,000 cubic yards, $2.75, amounting to $2,750; for clearing bank 20 miles, $35.00, amounting to $700.00; total $9,950. Albert J. Twiggs, Augusta, Ga., bid for rock excavation, 1,000 cubic yards, $5.00, amounting to $5,000; for fascines, 1,500 cubic yards, $1.25, amounting to $1,875; for riprap stone, 1,000 cubic yards, $3.50, amounting to $3,500; for clearing river bank 20 miles, $50.00, amounting to $1,000; total $11,375.

Remarks: Amiunt available $10,000.00.

"Bid recommended for acceptance, "with an asterisk against the name of Wm. H. Walsh "he being the lowest responsible bidder for the best and most suitable materials and service.

"I hereby certify that the above Abstract of Proposals is correct.

O. M. CARTER,
Capt., Corps. of Engrs., U. S. A.
Savannah, Ga., Sept. 19, 1892."

"A true copy,
J. W. O. Sterly,
Notary Public" with seal.

Judge-Advocate: A copy of this will be attached to the record marked Exhibit No. 71.

Q. Give me the proposals and the contract.

A. (Witness handed the Judge-Advocate the papers called for)

Judge-Advocate: I offer in evidence the three proposals named, the articles of agreement,—contract,—between Capt. Carter and Wm. H. Walsh, and the Contractor's bond, in the penal sum of $10,000, with W. H. Ray and Chas. C. Ely as sureties, which will be attached to the record marked Exhibits Nos. 72, 73, 74, 75 and 76.

Q. (Continuing examination) In giving the detailed
962 statement of the expenses of the office, you gave a statement of a months salary of Mr. Connolly being charged to Mr. Twiggs?

A. Yes, sir.

Q. Did Mr. Connolly at that time occupy any other official position outside of his employment in the office?

A. He was United Commissioner.

Q. Was any of his time given to the performance of his duties as United States Commissioner during that period?

A. He worked after office hours as Commissioner.

Q. Was any of his official time as clerk in the office devoted to that? Did it take him away any of the hours of the day?

A. Yes, sir; at that time, do you mean?

Q. During that period? During that month?

A. That I cannot remember.

Q. As United States Commissioner, he heard causes,—heard complaints

A. Yes, sir

Q. Had he any other matters to occupy his attention that you are aware of?

A. He was doing general office work as clerk in the office,—anything that he had to attend to.

Q. Any employment that took him away from his office, or from the Government work in his office?

A. At that time?

Q. At that time; I only want to cover that period?

A. I don't remember.

Cross-Examination by Mr. Rose.

Q. Referring to these contracts of 1890; was the advertisement published in the newspapers authorized by the War Department?

A. Yes, sir.

Q. And for the number of times authorized by the Department?

A. Yes, sir.

963 Q. And in the form authorized by the Department? Just compare the copy of the printed advertisement fastened to the bill with the other one.

A. Yes, sir.

Q. The same is true, is it not, of the 1892 contract? If not true, tell me wherein it differs?

A. That is the same.

Q. Let me briefly state it: request was asked for the publication of an advertisement in certain newspapers for a certain number of times in each news paper?

A. Yes, sir.

Q. That request was approved by the War Department as asked, and that advertisement was published in the newspapers asked for and the number of times asked for?

A. Yes, sir.

Q. The instructions of the War Department,—the approval of the war department, was carried out by the Engineer Officer?

A. Yes, sir.

Q. And can you tell me how soon the publication was begun after the receipt in Savannah of the approval of the advertisement? Take the 1890 contract?

A. Take the 1890 contract.

Q. That came back on the 13th and was published on the 16th I think?

A. On the 16th.

Q. The papers show that it came back from Washington, or at least was received in Savannah on the 13th?

A. On the 13th.

Q. Will you give me the dates when the advertisement came back from Washington and the first publication was made, in the 1892 contract; that is, above Augusta?

A. It came back from Washington and was received in Savannah Aug. 29th, and the first publication was August 31, 1892.

Q. Do you know what the intervening day was,—the 964 30th,—whether it was Sunday or not?

A. That I do not know.

Q. You stated in answer to Col. Barr, that the official records showed that work on the 1892 contract was stopped from the 15th of November, 1892, to the 12th of June, 1893; have you those official records here?

A. No, sir. I remember it was on account A letter was written and it must be in the copy book, but not the authority. Capt. Carter's application is in the copy book.

Q. Will you let me see it? Do you remember why it was done, from the examination you have made of the records?

A. On account of the extreme cold weather, and the men had to work partly in the water, and for that reason—

Q. And for that reason it was not completed until warm weather?

A. Yes, sir.

Q. You testified that, in the 1892 contract, there was no record of the specifications having been sent to Mr. Walsh?

A. Yes, sir.

Q. And that Mr. Walsh put in a bid?

A. Yes, sir.

Q. Mr. Applegate put in a bid for that contract?

A. Yes, sir.

Q. Will you find me the record showing the sending of specifications to him?

A. There is none.

Q. There is no record?

A. No, sir.

Q. Will you take voucher No. 1, with reference to work done under the Twiggs contract, and tell me how many laborers there are on that voucher at 75c per day?

A. 56.

Q. How many are there at $1.00 a day?

A. 20.

965 Q. Does that include the blacksmith,—just a dollar?

A. 21.

Q. Now, did you count the first name on the list?

A. That man is $1.50 man.

Q. What is he?

A. He is the recorder.

Q. Is there any other $1.50 man on the whole list?

A. Yes, sir.

Q. How many more?

A. One.

Q. What is he?

A. He is a laborer,—Geo. Barnum.

Q. Where is that?

A. Item No. 2.

Q. Wasn't he a superintendent?

A. I don't know.

Q. I noticed in your giving the amounts paid to employes for traveling, that they differed from the amounts paid to Capt. Carter when he went up there; do you know what employes were allowed at that time under the law?

A. Actual expenses.

Q. What was the Engineer Officer allowed?
A. The Engineer Officer was allowed eight cents a mile at that time.
Q. That accounts for the difference in the one case of $21.12 and $10.42; does it not?
A. Yes, sir.
Q. You spoke of other work going on at the same time in the Savannah District,—at the time work was going on by the Government under the Twiggs contract?
A. Yes, sir.
Q. Did the Government have any laborers employed working on the work being performed by the contractors outside of Mr. Twiggs?
A. Laborers on that work?
966 Q. Savannah District outside of the Twiggs contract?
A. Yes, sir.
Q. Where?
A. Ocmulgee and Oconee Rivers.
Q. Who had that contract?
A. That was all hired labor.
Q. I mean of any contract that was then in force where the contractor was doing the work?
A. Savannah Harbor.
Q. Who was the contractor?
A. Atlantic Contracting Co. for the jetty work and P. Sanford Ross for the dredging.
Q. What laborers did they have paid on the Government payrolls?
A. They were not paid on the Government rolls.
Q. Were there any laborers carried on any other contract, where a contract was in existence, and the contractor was performing it, where laborers were carried on the payroll, as at Augusta under the Twiggs contract?
A. No, sir.
Q. Were any supplies purchased for the work the same way as under the Twiggs contract?
A. Yes, sir.
Q. What contract was that?
A. No; I misunderstood you.
Q. Was any supplies purchased by the government for the performance of contract work other than the Twiggs contract in 1893?
A. No, sir.

Q. So that the bills that came in for the purchase of supplies for the Twiggs contract,—that came here to the office at Savannah,—had to be checked up, and their correctness ascertained by the office here?

A. Yes, sir.

Q. And no other bills of like character came into the
967 office during that time?

A. Oh, yes, sir.

Q. For contract work?

A. Not for contract work, but bills.

Q. Speaking with reference to contract work, was there a payroll like the Twiggs contract payroll?

A. No, sir.

Q. Sometime was taken in the office, by the office employes in Savanah, in making out those payrolls and checking them up?

A. No, sir; the payrolls were not made out in the office here; they were made out in Augusta.

Q. They were checked up in Savannah?

A. Yes, sir.

Q. The bills were checked up in Savannah?

A. Yes, sir.

Q. The office time was taken up in doing that?

A. Yes, sir.

Q. As I understand you, the time expired under the Twiggs contract on the 15th of October for him to complete the work?

A. On the 5th.

Q. The original contract time was to the 5th of October?

A. Yes, sir.

Q. He was given an extension of 14 days?

A. Yes, sir.

Q. Without any charge for superintendence?

A. Yes, sir.

Q. The next extension was one for 16 days, without charge for superintendence, is that right?

A. That is right.

Q. Both of those extensions had the approval of the Chief of Engineers?

A. Yes. sir.

Q. Down to the time of the first extension without su-
968 perintendence, was there anything charged against him for Superintendence?—the 14 days?

A. No, sir.

Q. Nothing was charged. Have you the original contract there? Clause No. 35 of the specifications of the original contract provides that, should the time of the completion of the contract be extended, all expenses for inspection and superintendence during that period of extension, the same to be determined by the Engineer Officer in charge, shall be deducted from the payments due, or to become due, the contractor: Do you recall that being in the original specifications?

A. Yes, sir.

Q. And the deductions made for inspection and superintendence during the 16 days, and before the execution of the supplemental contract, were made under that clause?

A. Yes, sir.

Q. The supplemental contract which was executed by Mr. Twiggs, and bears date of 6th of November, 1893, provides that all expenses of inspections and superintendence during such extension, as well as all excess of the cost of the work done, or to be done, by the said party of the first part, Capt. O. M. Carter, Corps of Engineers, is to be deducted from any moneys due, or to become due, said parties of the second part: Now, the expenses deducted after the 6th of November for superintendence and inspection were deducted in pursuance of the provisions of the contract?

A. All deductions were from the 20th of October.

Q. But the first deductions were made under the provisions of the original contract?

A. Yes, sir.

Q. And the authority gave 16 days extension with superintendence to be paid for by Mr. Twiggs?

A. The first deductions were made upon Capt. Carter's recommendation and the approval of the Chief of Engineers.

969 Q. The 16 days?

A. Yes, sir.

Q. And after that, made under this contract?

A. Yes, sir.

Q. The other deductions were for work actually done, or payments actually made, as reported by Mr. Conant?

A. Yes, sir.

Q. Mr. Conant hired those laborers?

A. Yes, sir.

Q. And made the purchases?

A. Yes, sir.

Q. And reported the amounts due for labor and for purchases?
A. Yes, sir.
Q. And those are the payments for superintendence and inspection?
A. Yes, sir.

Re-direct Examination by the Judge-Advocate.

Q. How could you check off the payrolls here in this office if they were made in Augusta?
A. Checked this off with the daily record of time, and saw whether the computation was right.
Q. You didn't check off each name?
A. No, sir; of course, didn't know the men.
Q. Who did that work?
A. I did.
Q. You were employed as Chief Clerk here?
A. Yes. sir.
Q. Regardless of any contract being in process of execution?
A. Yes, sir,
Q. Did the accused, Capt. Carter, ever at any time, submit a request to the War Department, for the approval in form and substance of an advertisement?
A. Not in that way; no, sir.
970 Q. Did he ever give the form in asking authority to advertise?
A. He asked authority to advertise.
Q. Did he ever refer to the form or date of the advertisement in any letter asking authority to advertise? Can you find it?
A. No, sir.
Q. You know what those letters have been?
A. Yes, sir.
Mr. Rose: The letters will show for themselves, it seems to me; I don't want to object.
Judge-Advocate: The letters are already in.
Mr. Rose: (Reading) "I herewith enclose copy of advertisement, and request authority to advertise—"
Judge-Advocate: Go on.
Mr. Rose: (Reading) "I enclose herewith copy of advertisement inviting proposals for improving Savannah River above Augusta, Ga., and request authority to publish

the same in the following newspapers:" Now that advertisement was the advertisement approved, and which contains the dates and times.

Judge-Advocate: If you can find any approval of the advertisement, I should be very glad to have it submitted to the Court for their consideration.

Mr. Rose: It is in the specifications, which are approved, and there is a copy that went with that letter, and came back from the War Department as one of its enclosures.

Judge-Advocate: That is a question to be determined. I certainly cannot infer times and date, and that the form and substance of the advertisement has been approved. Maybe the Court can. That is a matter to be submitted to the Court hereafter. That matter will be submitted for their elucidation, but I cannot find it. in the documents before the court.

Q. (By the Court) I want to know whether the compensation of Mr. Sterly and Mr. Connolly and the messenger boy, and charged to the Twiggs contract, was in addition
971 to the salary paid them by the Government?

A. No, sir; it was not in addition; we were in regular employment.

Q. (By the Court) I want to know if the vouchers read state whether those on file for Capt. Carter's account were audited by the proper officer in Washington?

A. Yes, sir; they were audited.

(At this point in the proceedings, Reporter W. O. Tarver was relieved by Reporter Geo. T. Cann.)

972 (Second take Feb. 2, 1898 by G. T. Cann.)

JOHN C. BAXTER, a witness for the prosecution, being duly sworn, testified as follows.

Direct Examination.

Questions by the Judge-Advocate.

Q. What is your full name?

A. John C. Baxter.

Q. What position do you hold under the United States

A. Chief of Division Treasury Department, Office of the Auditor for the War Department.

Q. In that capacity you have the custody of the papers from the Engineers Corps of the army?

A. I have, and the accounts that come from there.

Q. Please produce the account current of Capt. O. M. Car-

ter, Corps of Engineers, from Dec. '96 to Dec. '97 inclusive.

A. I have not got it; they were not called for. December '96 to December '97, did you say?

Q. Yes.

A. They were not called for.

Q. What accounts current of Capt. Carter have you?

A. Dec. '96 to July '97 inclusive.

Q. Nothing beyond July '97?

A. He rendered no account since then.

Q. You have the last account then that he rendered?

A. Yes, sir.

Q. You have those accounts current there?

A. I have. (Here the account are produced and handed to counsel for the accused by the Judge-Advocate)

Q. Give me, if you please, voucher No. 30, the account of December 1896?

A. Be kind enough to state what appropriation it pertains to.

973 I have here the improvements, the different works, you know you have not given me the name of the improvement yet.

Q. No, I am looking to see if I can find that in the specifications. I have a simple memorandum of what I wanted. For improving the Harbor at Savannah, Ga.

A. And now give me the number of the voucher again.

Q. No. 30, Dec. 1896.

A. I don't believe I have that voucher here, it is not in the list called for.

Q. Have you voucher No. 8, July 1897?

(Here the witness produces a voucher)

Judge-Advocate: I offer in evidence voucher No. 8, for the month of July 1897, Appropriation for Improving the Harbor at Savanah, Ga., applied to that work, accounts of Capt. O. M. Carter, Corps of Engineers. (Here the Judge-Advocate reads the contents of voucher, No. 8); and also reads the following "Paid to the Atlantic Contracting Company by Edward H. Gaynor, Treas. for jetty work, board and lodging $230,749.90, paid by check No. 270,536, dated July 6, 1897, for $230,749.90, on the United States Assistant Treasury, New York, N. Y." A copy of this voucher will be attached to the record and marked, Exhibit No. 77.

Judge-Advocate: Give me number 9 for July 1897, Cumberland Sound; (Here the witness produces the paper)

Judge-Advocate: I offer in evidence and will read

Voucher No. 9, for the month of July 1897, appropriation for improving Cumberland Sound Ga., and Fla., applied to that work, accounts of Capt. O. M. Carter, Corps of Engineers, (Here the Judge-Advocate reads the contents of the paper) In addition to the brief statement of the character of the paper made by me, there appears, (Reading) "Paid to
974 The Atlantic Contracting Co., Edward H. Gaynor, Treasurer, for jetty work and meals, $345,000.00; paid by check No. 270,537, dated July 6, 1897, for $345,000.00, on the United States Assistant Treasurer, New York N. Y."

A copy of this will be attached to the record and marked Exhibit No. 78.

Judge Advocate:—I call attention to the fact that while this appears to be submitted by Edward H. Gaynor, as Treasurer, the signature is not the same as the Edward H. Gaynor who receipts these accounts. It appears that the total of the amounts charged in this statement amounted to $403,923.12, and this voucher, as I read, was paid for $345,000.00, leaving a balance of $58,923.12. I desire to pass these vouchers to each member of the Court, the signatures appear so entirely different I would like to have you examine them; there are two of them (Here the vouchers are passed the members of the Court).

Judge Advocate:—I offer in evidence the accounts current of Captain O. M. Carter, the accused, for December, 1896, for January 1897, for February, 1897, for March, 1897, for April, 1897, for May, 1897, for June, 1897, and for July, 1897, for the purpose of showing to the Court that there is nowhere acknowledged the receipt by the accused of the sum of $132.10 alleged to have been received from one Alfred Hirt for the United States on or about December, 1896, set forth in the Specification eleven to charge three.

Copies of these will be attached to the record, marked, Exhibit 79, 80, 81, 82, 83, 84, 85, and 86.

Judge Advocate; (to the witness) These are all the vouchers you have, I think, that I have asked for; you have other vouchers; but you have not those mentioned by me; I will look for them elsewhere, and, if I cannot find them, I will ask you to procure them from head-quarters in Washington for me.

Here the Court, at 2:50 o'clock P. M. adjourned until 11 o'clock A. M. tomorrow, February 3, 1898.

THOMAS F. BARR
Col. & Asst. Judge Adv. Genl.
Judge Advocate.

975 United States Court Room,
Savannah, Georgia,
February 3, 1898.

The Court met pursuant to adjournment to-day, at 11 o'clock a. m.

Present.

All the members of the Court and the Judge Advocate.

The accused, his counsel, and the reporter, G. T. Cann, were also present.

FRED R. HOWARD, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination.

Questions by the Judge-Advocate.

Q. State your full name?

A. Fred R. Howard.

Q. Where are you employed?

A. United States Engineer Office, Savannah, Ga.

Q. What are your duties?

A. Stemographer and typewriter.

Q. Is there more than one typewriting machine in the office?

Q. Yes, sir, there are three.

Q. You operate upon all of them?

A. I have used all of them at times.

Q. Can you testify as to the work from any one of those machines?

A. I can testify as to the work of the machine which I am using now, and do use all the time regularly.

Q. Look at the typewriting in this statement of accounts, these two papers I hand you and say if you can testify to what machine those were printed on?

A. Those were printed on the machine which I am using now regularly.

Q. How do you determine that fact?

976 A. By peculiarity in two of the capital letters?

Q. What letters are those?

A. One is the capital T and the other is the capital E.

Q. What are their peculiar characteristics?

A. In the E, the lines of the E are not squarely at right

angles, there are corners knocked off of it, in the peculiar way as is the case in my machine.

Q. Do you find that peculiarity manifested in each statement of accounts there, page after page?

A. I do, yes, sir.

Q. On each page of those statements. Now, have you ever seen any paper like that on which those are typewritten?

A. Yes, sir.

Q. Where?

A. We have considerable of it in our office; I use it almost every day.

Q. There are water marks in each by which you recognize it?

A. Yes, sir.

Q. Read those water marks.

A. It is marked "Persian Bond." I recognize it also by the size, color and weight.

JOHN W. O. STERLY, recalled as a witness for the prosecution, having been previously duly sworn, testified as follows:

Direct Examination.

Questions by the Judge Advocate.

Q. Mr. Sterly, look at the date of that account, state what is the date of its receipt and by whom signed.

A. 6th, of July, 1897, for $345,000.00, The Atlantic Contracting Company, Edward H. Gaynor, Treasurer.

Q. Do you know where Mr. Gaynor was on that day?

977 A. No, sir, I do not.

Q. Do you know if Mr. Gaynor signed the receipt on that day?

A. He did not sign the receipt on that day.

Q. When did he sign it?

A. He signed that receipt the 30th, of June, 1897, but the date was not filled out.

Q. Was the amount filled out?

A. Yes, sir.

Q. The full amount filled out there?

A. $345,000.00 for Cumberland Sound, was filled out.

Q. Were these statements attached?

A. No, sir.

Q. That is the signature of the accused, Capt. Carter? (Showing witness a paper)

A. Yes, sir.

Q. When was that affixed?

A. Capt. Carter signed that voucher right after Mr. Gaynor had signed. This was not filled out, but the receipt had been filled out for $345,000.00, and attached to the voucher.

Q. None of those charges were upon that paper, when certified to by the accused?

A. No, sir.

Q. Where was Capt. Carter, if you know, on July 6th?

A. On the 6th, of July?

Q. Yes.

A. Capt. Carter was either in New York or in Sandy Hook. He went north with the Secretary of War, but on the 6th, he must have been about New York.

Q. When was that "6th" placed in there, do you know the date?

A. The 6th, was put in there,—I put that in there, I cannot tell exactly, probably, the 6th, or 7th.

978 Q. Did you inform Capt. Carter anything in relation to the final statement of this account?

A. No, not of this account, not Cumberland Sound. I received instructions to date the check by the date of the stub; the check is dated the 6th. I received instructions.

Q. When did you receive those instructions?

A. That i don't remember; though it was the 6th, otherwise, I would not have dated it.

Q. From whom did you receive the instructions?

A. From Capt. Carter.

Q. Where was he when he so instructed you?

A. Either in New York or about New York.

Q. By letter or by wrie?

A. I am not certain as to that, whether it was by wire or by letter; I think it was by wire.

Q. Was the check book in your possession?

A. The check book?

Q. Yes.

A. Yes, sir, in the safe.

Q. Were all the checks in it?

A. No, sir, the check for that account was made out at the same time that the voucher was made out and Capt. Carter took the check with him, complete in every respect, except as to date.

Q. Did you fill out the stub in every way except as to date?
A. Except as to date.
Q. At the same time you made out the check?
A. Yes, sir.
Q. The check was made out in your handwriting?
A. Yes, sir.
Q. Now, did you communicate with Capt. Carter on the 6th, of July in any way?
A. Not the 6th, of July.
979 Q. The date of this voucher, the date of the receipt signed by Mr. Gaynor?
A. No, sir, I communicated with him on the first.
Q. What did you communicate to him?
A. I telegraph to him the amount of work done for Savannah Harbor.
Q. When did Capt. Carter leave here at that time, do you remember?
A. Capt. Carter left on the 30th, at noon.
Q. These statements are dated July 1st?
A. Yes, sir.
Q. When were they attached to that voucher?
A. They were attached to the voucher as soon as the account was made out from the report of operations, which came from Fernandina.
Q. Well, when were those reports received?
A. The reports included the last day of June and then are sent to Savannah; it must have been about July 1st, or 2d, probably July 1st, as it is dated the first of July.
Q. Was Capt. Carter in Savannah when those were received?
A. No, sir, he was not in Savannah.
Q. I see that each of these statements has "Approved" before the signature of Capt. Carter,—when were those signatures affixed, if you know?
A. They were affixed after Capt. Carter came back from New York.
Q. When did he return?
A. Capt. Carter, if I remember rightly, he returned on the 8th.
Q. The 8th, of July, 1897?
A. Yes, sir, he traveled on duty to Washington, the travel voucher will show that.
Q. There is a travel voucher which will show his absence at that time?

A. Yes, sir, on duty from Washington to Sandy Hook.

980 Q. This statement I have shown you is for the appropriation of Cumberland Sound?

A. Yes, sir.

Q. (It is already in evidence, may it please the Court) I show you the voucher for improving the Harbor at Savannah, Ga. (Handing witness a paper) that receipt at the foot of the voucher, is signed by whom?

A. By Edw. H. Gaynor, as Treasurer for the Atlantic Contracting Co.

Q. And the certificate as to the correctness of the account is signed by whom?

A. By O. M. Carter, Capt. Corps of Engrs. U. S. A.

Q. Do you know when those signatures were affixed?

A. They were all affixed on the 30th, of June, 1897.

Q. Was the body of the account filled out at that time?

A. No, sir.

Q. When was that filled out?

A. After the amount of work done during the month of June was known.

Q. Did you draw a check for that amount mentioned there, and what is it?

A. $230,749.90.

Q. Did you fill out the check in your own handwriting?

A. I filled out the check to the order of The Atlantic Contracting Company, but not the date and not the amount.

Q. Did you fill in that "6th," is that your figure?

A. On the receipt?—yes, sir.

Q. What became of the check after you drew it?

A. Capt. Carter took the check with him.

Q. Did you make any entry on the stub?

A. I made the entry on the stub, The Atlantic Contracting Co., leaving the amount blank and filled that in the next day, as soon as I knew the amount.

981 Q. These statements of accounts, the separate statements of account, are marked "approved" by Capt. Carter?

A. Yes, sir.

Q. When did he affix his signature or his approvals?

A. After the voucher was completed.

Q. What date?

A. The voucher was complete on Capt. Carter's return; when exactly the voucher was completed, I don't know; I think the voucher was made out immediately, as soon as the amount was known.

Q. Do you know if when that check was drawn out, there were any funds available for its payment to the credit of the accused?

A. No, sir.

Q. You don't know?

A. There were funds available, but not enough to cover that amount.

Q. Do you know the amount to his credit in the sub-Treasury in New York?

A. I can refer to the book. The monthly statement of funds shows the balance on hand in the Assistant Treasury on June 30, of $40,473.79.

Q. Now, when did you receive instructions as to the date to be inserted on the receipts, and in the stubs of the check book?

A. I received instructions on that date, the 6th, when I was instructed to date the check, July the 6th.

Q. Date the stub?

A. Yes, sir.

Q. And the recipt?

A. Yes, sir.

Q. How did you receive those instructions, by letter or by wire?

A. I cannot remember whether it was by wire or by letter.

Q. You remember that you were so instructed and complied with the instructions?

A. Yes, sir.

982 Q. Do you know who filled out those statements?

A. Each check?

Q. No, these statements of account, which I have shown you, the typewriting?

A. Yes, sir.

Q. Who did it?

A. They were made out in our office.

Q. By whom?

A. By Mr. Connolly.

Q. Mr. Connolly?

A. Yes, sir, it was done so as to have the bills correct, correct bills.

Q. It is Mr. Connolly's work? Any statements of that character filed by The Atlantic Contracting Company?

A. No, sir, that is made from our office computations. Those bills are made up from the office computations.

Q. And not statements of account that The Atlantic Contracting Company had so submitted?

A. No, sir, it was made from our office computations.

Q. I think I asked you yesterday as to these signatures, if these signatures on these different statements are Edward H. Gaynor's signatures,—if I did not, I do now. (Upon interruption by Mr. Rose) He testified as to his signature on the receipts. Did I show you these papers yesterday?

A. Yes, sir.

Q. Well, are these the signatures of Edward H. Gaynor?

A. It is apparently not.

Q. Have you any knowledge of the handwriting in which they are written?

A. They resemble Mr. Connolly's handwriting.

Q. Look at your copy book page 359, telegrams?

983 A. There are two telegrams, July 1, 1897, Capt. O. M. Carter, Shoreham, Washington, D. C. Savannah, two hundred and thirty thousand, seven hundred and forty-nine dollars and ninety cents. Sterly."

Q. Any telegram in relation to the other statements of account?

A. No, sir.

Q. Then had that check been filled in for the amount, why did you telegraph the amount of that check to him; the amount of that check was not filled in?

A. This amount was not filled in.

Q. I understand that. The other one was filled in?

A. Yes, sir.

Q. This is a proposal of A. M. Bangs, that is already in evidence, can you tell whose handwriting that proposal is filled out in?

A. That is Mr. Connolly's handwriting, but the price was written by Mr. Galliger.

Q. Who is Mr. Galliger?

A. He is a clerk for The Atlantic Contracting Company.

The President: Whose proposal is that?

Judge Advocate: A. M. Bangs, I so stated.

The President: What date?

Judge Advocate: Proposals that were opened Sept. 29, 1894.; the case in which Bangs received the contract.

By a member: What work?

Judge Advocate: The improvement of Cumberland Sound, Ga. The contract supervised by Mr. Conant.

Q. In whose handwriting is the guarantee filled out?
A. Mr. Connolly's handwriting.
Q. Who is the United States commissioner before whom the sureties justified?
A. Mr. Connolly.
Q. What is his full name?
A. Michael A. Connolly, U. S. Commissioner.
984 Q. Look at G. R. 58, 1890
A. This is a letter from the office of the Chief of Engineers, dated Sept. 20, 1890, notifying Capt. Carter of the passage of the River and Harbor Bill, and requesting him to submit a project for the expenditure.
Q. How as to the expenditure for Cumberland Sound, Ga.?
A. Improving Cumberland Sound, Ga. and Fla., continuing improvement, $112,500.00.
Q. Look at page 66 of the letter book.
A. Capt. Carter submits on the 8th of October, 1890, to the Chief of Engineers, through Col. Wm. P. Craighill, Corps of Engineers, U. S. A., Division Engineer, S. E. Division, Baltimore, Maryland, his project of expenditure for Cumberland Sound.
Q. What was the date of approval of that project, if it was approved?
A. It was approved on the 23d, of March, 1891.
Q. What was the date of the request to advertise and authority to print specifications?
A. March 17, 1891.
Q. Six days before the approval of the project?
A. Yes, sir.
Q. When did authority to advertise reach Savannah?
A. On March 27, 1891.
Q. Was the date of advertisement of the specifications left at its original date, March 17th?
A. Yes, sir.
Q. When were bids to be opened?
A. On the 15th, of April, 1891.
Q. How many copies were printed?
A. Ywo hundred copies.
Q. What was the date of the first issue of the specifications to applicants?
985 A. April 3, 1891.
Q. When was the advertisement inserted in the authorized papers?

A. In the Savannah Mornings News on the 28th, of March, 29th, of March, the 30th, and 31st, April 13, and 14, 1891. The Marine Journal New York, on the 4th, and 11th, of April, 1891; the Engineering News, New York, April 4th, and 11th, 1891; the Engineering and Building Record, New York, April 4th, and 11th, 1891.

Q. Look at C. S., 23, 1890?

A. This is an application from G. W. Linder, of Wilmington, N. C.

Q. Read it.

A. (Reading) "Wilmington, N. C.,

Dec. 18, 1890.

"Lieut. O. M. Carter,

You will oblige me by sending specifications for building jeeties in Cumberland Sound, and Fernandina Fla.

G. W. LINDER,
Wilmington, N. C."

Q. Page 149?

A. (Reading)

"Savannah, Ga. April 3, 1891.

"Mr. G. W. Linder,
Wilmington, N. C.

Sir:

In response to request contained in your letter of December 18, 1891, there is sent to you with this one copy of specifications for constructing jetty at entrance to Cumberland Sound, Ga and Fla.?. If after reading and considering it you desire to put in a bid on the work, two more copies of the specifications will be sent to you on your request.

Very respectfully,
Your obedient servant,

O. M. CARTER,
Capt. Corps of Engrs. U. S. A."

(One inclosure)

986 Q. C. S. 17, 1891.

A. (Reading)

"C. S. 17, 1891.

Waltertown, Ga.
April 1, 1891.

"O. M. Carter,
Capt. Corps of Engineers, U. S. A.

My dear Sir:

Would you please send me the specifications for construct-

ing jetty at entrance to Cumberland Sound, Georgia and Florida?

Very respectfully,
JONATHAN RARICK,
Contractor, Waltertown, Via
Waycross, Ga."

Q. Page 151.
A. (Reading)

"Savannah, Ga., April 3, 1891.

"Mr. Jonathan Rarick,
Waltertown, Georgia.

Sir:

In compliance with your request of first instant, I send you herewith, one copy of the specifications for constructing jetty at entrance to Cumberland Sound, Georgia and Florida. If after consideration of this, you intend to bid on the work, two more copies will be sent to you on your application.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. Corps of Engrs. U. S. A

(One enclosure)."

Q. Page 154.
987 A. (Reading)

"Savannah, Ga. April 6, 1891.

Mr. G. W. Oinder,
Wilmington, N. C.

Sir:

In response to request contained in your letter of the 4th. instant, there are sent to you herewith two more copies of specifications for constructing jetty at entrance to Cumberland Sound, Ga., and Fla.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. Corps of Engrs. U. S. A.

(Two enclosures)"

Q. C. S. 20.
A. (Reading)

"The Creosote Lumber & Construction Company,
Fernandina, Fla. April 9, 1891.

Capt. O. M. Carter,
Corps of Engr. U. S. A?.
Savannah, Ga.

Dear Sir:—

Will you kindly send me the necessary copies of instructions, specifications and proposals for the work done at the entrance of Cumberland Sound? I think a number of business men here are willing to bid on this work.

Yours very respectfully,
B. T. BURCHARDI."

Q. Page 159.
A. (Reading)

"Savannah, Ga. April 15, 1891.

Mr. B. T. Burchardi,
Fernandina, Florida.

Dear Sir:

In obedience to your request of 9th, instant, there 988 is sent you herewith one set of specifications for constructing jetty at Cumberland Sound. I regret to say that your letter did not reach me until late last evening, too late, I fear for the set to reach you in time for you to submit propositions for dling the work.

Yours truly,
O. M. CARTER,
Capt. Corps of Engrs. U. S. A.

(1 enclosure)"
Q. Page 148?
A. (Reading)

"Savannah, Ga. April 3, 1891.

"Mr. J. H. Bryan,
Room 10, Hubbard Block, Jacksonville, Fla.

Sir:

In compliance with your request of Nov. 26, 1890, I send herewith one copy of the specifications for constructing jetty at entrance to Cumberland Sound, Georgia and Florida.

If after consideration of this, you intend to bid on the — two more copies will be sent to you on your application.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. Corps of Engrs. U. S. A.

(One enclosure)."

Q. Page 150.
A. (Reading)

"Savannah, Ga., April 3, 1891.

Mr. E. D. Lukenbill,
Agent F. C. & P. R. R. Co.,
Fernandina, Florida.

Sir:

In reply to your letter of the 26th, of November 1890, 989 I send you with this one copy of specifications for constructing jetty at entrance to Cumberland Sound, Georgia and Florida, which will give you all the information you asked for, excepting the name of the successful bidder. That, of course, cannot be given until after the bids are opened.

Should you desire to bid on the work, two more copies of the specifications will be sent to you on your application.

Very respectfully,
Your obedient servant,

O. M. CARTER,
Capt. Corps of Engrs. U. S. A.

(One enclosure.)"

Q. Page 155.
A. (Reading)

"Savannah, Ga. April 3, 1891

Mr. John F. Gaynor,
Savannah, Georgia.

Dear Sir:—

There is sent to you to-day in a separate package, one set of specifications for constructing jetty at entrance to Cumberland Sound, Ga. and Fla.

Very respectfully,
Your obedient servant,

O. M. CARTER,
Capt. Corps of Engrs. U. S. A.

(3 enclosures in separate package.)

Q. Page 153.
A. (Reading)

"Savannah, Ga. April 4, 1891.

Mr. E. L. Merkel, President,
Alabama Dredging and Jetty Co.,
8 N. Commerce St., Mobile, Ala.

Dear Sir:—

There is sent to you today in a separate package

990 one set of specifications for constructing jetty at entrance to Cumberland Sound, Georgia and Fla.

Very respectfully,
Your obedient servant,
O. M. CARTER,
X *Capt. Corps of Engrs. U. S. A.*

(3 enclosures in separate package.)"

Q. Do you find any application from Skinner & Wallace, of Wilmington, or P. Sanford Ross, for specifications under that contract, under that advertisement?

A. No, sir, I do not find any.

Q. Have you the letter transmitting the abstract of proposals?

(Here witness produces copy of letter)

Judge-Advocate: I offer in evidence and read,

"United States Engineer Office,
"Savannah, Ga., April 15, 1891.

"The Chief of Engineers, U. S. Army,
Washington, D. C.

General:

I have the honor to transmit herewith all proposals received for constructing jetty at entrance to Cumberland Sound, Ga., and Fla., with abstract of same, and authority is requested to award the contract to John E. Gaynor, the lowest responsible bidder, the prices being deemed reasonable.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. Corps of Engrs., U. S. A.

(4 enclosures.)"

Q. Have you the abstract?

A. No, sir, this is just the copy.

Judge Advocate: Also the abstract referred to in the communication, a copy of which is in the letter press book.

991 "Abstract of Proposals for Constructing Jetty at Entrance to Cumberland Sound, Ga., and Fla., opened on April 15, 1891, by Capt. O. M. Carter, Corps of Engineers, U. S. A."

I will have a copy of this made and attached to the record, because it is in tabulated form.

Judge Advocate: A copy of this abstract will be attached to the record and marked Exhibit No. 87.

Judge-Advocate: Now, give me the proposals.

(Here proposals are handed to the Judge Advocate.) I offer in evidence the proposals referred to in the abstract, copies of which will be attached to the record and marked, Exhibit No. 88, Exhibit No. 89, Exhibit No. 90. Calling attention to the fact that on this date of March 17, 1891, the engineering office here in Savannah, Ga., specifications, as to mattresses, contained the following provision, under the third section of the specifications: "Mattresses, either of the following designs for mattresses, may be used at the option of the contractor." Then follows the description of the two designs of mattresses, which may be bid for in another place, "Separate bids will also be submitted for brush mattresses, which, at the option of the engineer in charge, may be substituted for those of logs and brush." I also call attention to the fact that the guarantore are B. D. Green, and Henry Berg, each of whom in the justification states under oath that he is worth pecuniarily the sum of $50,000.00, over and above all his debts and liabilities.

Judge-Advocate: I also offer in evidence the articles of agreement between Capt. O. M. Carter, entered into May 4, 1891, and John F. Gaynor, for constructing jetty at entrance to Cumberland Sound, Ga. and Fla.; a copy of this agreement will be attached to the record, and marked Exhibit No. 91. I also offer in evidence the accompanying contractor's bond, with John F. Gaynor as Principal, and as sureties
992 B. D. Green of New York, N. Y., and Anson M. Bangs, of Fayetteville, N. Y., in the penal sum of $75,000.00, a copy of this bond will be attached to the record and marked, Exhibit 92.

Q. When did work begin under that contract, Mr. Sterly?
A. Work began on the 23rd of June, 1891.
Q. When did it close?
A. On the 14th of Nov., 1891.
Q. Look at page 54 of the Fort Clinch jetties.
A. "Savannah, Ga., June 3, 1891.
Q. Read it.
A. (Reading)

"United States Engineer Office,
Savannah, Ga., June 3, 1891.
The Chief of Engineers, U. S. Army,
Washington, D. C.
(Through Col. Wm. P. Craighill),
Corps of Engineers, U. S. Army,
Div. Engineer, S. E. Div., Baltimore, Md.)

General:

The spur jetties constructed for protecting the shore line near Fort Clinch, Florida, have accomplished their purpose, but to the westward of them, where no work has yet been done, the bank has been rapidly cutting, and unless this is stopped, it is quite likely that a large area behind Fort Clinch will be converted into a lagoon. A great portion is now overflowed during exceptionally high tide. The sand taken from the shore, is moreover, washed into the navigable channel. An examination of this bank was made on May 9, 1891, and a personal examination was made by me on May 27, 1891. It is necessary that about 2,000 feet more of the shore line should be protected. Spur jetties of brush mattresses loaded with rip-rap stone, and located as shown on the sketch herewith, will stop the erosion now going on. These should consist of a single course of mattresses, fifty feet in width, 993 and loaded with twelve inches of rip-rap stone. Near the inner ends of the spurs, a second course will, in some cases, be needed. The work now required will cost about $12,000.00, estimating brush mattresses at ninety-five cents per square yard, and rip-rap stone at $3.40 per cubic yard in the work.

If this money is available, I have the honor to request that an allotment of $12,000.00 may be made to be expended as recommended. The expenditure is necessary and the work should be done as soon as practicable.

Very respectfully,
Your obedient servant,
O. M. Carter,
Corps of Engrs. U. S. A."

(One enclosure)."

Q. Have you the reply to that?
A. Yes, sir.
Q. Read it to the Court.

A. (Reading) "Office of the Chief of Engineers,
United States Army,
Washington, D. C., June 6, '91.

Capt. O. M. Carter,
Corps of Engineers,
Savannah, Ga.
(Through Col. Wm. P. Craighill, Corps of Engrs.
Division Engineer, of the Southeast Division,
Baltimore, Md.)

Capt.:

In compliance with your request, of June 3, 1891, recommended for approval by Col. W. P. Craighill, Corps of Engineers, Division Engineer, Southeast Division, the sum of
994 $12,000.00 is alloted from the appropriation for Preservation and Repair of Fortifications, Act of February 24, 1891, to be applied to the protection of the shore of the Fort Clinch reservation, Fla., in the manner suggested by you.

By Command of Brig. Gen. Casey.

Very respectfully,
Your obedient servant,
JOHN G. D. KNIGHT,
Capt. Corps of Engineers."

1st Indorsement.

U. S. Engineer Office, 9 Pleasant St.,
Baltimore, Md., June 8, 1891.

Respectfully transmitted to Capt. O. M. Carter,
WM. P. CRAIGHILL,
Colonel Corps of Engineers, U. S. A.

Q. Look at page 58.

A. (Reading)

"Savannah, Ga., June 12, 1891.

"The Chief Clerk of the War Department,
Washington, D. C.
(Through the Chief of Engineers, U. S. A., Washington, D. C., and Col. Wm. P. Craighill, Corps of Engineers, U. S. Army, Div. Engineer, S. E. Division, Baltimore, Maryland.)

Sir:

I inclose herewith, a copy of an advertisement inviting proposals for construction of spur jetties near Fort Clich, Florida, and request authority to publish the same in the following official newspapers:

4 insertions in Morning News, Savannah, Ga.
2 " " Engineering News, New York, N. Y.

2 " " Marine Journal, New York, N. Y.
And
2 " " Engineering & Building Record, N. Y.

995 I also request authority to print 200 copies of accompanying specifications.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. Corps of Engrs., U. S. A."

(Two enclosures.)

Q. What was the date of the specifications and advertisement?

A. June 12.

Q. The same day on which the letter was written?

A. Yes, sir.

Q. When was authority to advertise received here in Savannah?

A. On June 22, 1891.

Q. When was the date given for the opening of bids?

A. July 10, 1891.

Q. When were the specifications printed and received?

A. I do not know when they were received.

Q. When were the copies sent to the Chief of Engineers?

A. On the second of July, 1891.

Q. What was the date of the first advertisement?

A. Morning News, Savannah, Ga., June 23.

Q. That's enough; I just want the date of the first advertisement in Savannah; what was the first date of the first advertisement in the New York papers?

A. June 27.

Q. 1891?

A. Yes, sir.

Q. Well, was that the date of the advertisement, or the date when it first appeared in the paper. The date when it first appeared in the paper, the date of the advertisement, was the date of the letter asking for authority to advertise,—is there any record of applications for the specifications there advertised?

996 A. There is no record on file among the Fort Clinch papers.

Q. No record of any specifications having been sent out?

A. No, sir.

Q. How many bids were received?

A. Two bids.

Judge-Advocate:—I offer in evidence and read:—

"United States Engineer Office,
Savannah, Ga., July 11, 1891.

The Chief of Engineers, U. S. Army,
Washington, D. C.

General:—

I have the honor to transmit herewith, all proposals received for constructing spur jetties near Fort Clinch, Florida, and to recommend the acceptance of the bid of William H. Walsh, he being the lowest responsible bidder.

Very respectfully,
Your obedient servant,
O. M. Carter,
Capt., Corps of Engrs., U. S. A.

(3 enclosures).

Judge-Advocate: And the abstract of proposals for constructing spur jetties near Fort Clinch, Fla., opened on July 10, 1891, by Capt. O. M. Carter, Corps of Engineers, U. S. Army. A copy of this abstract found on page 75, will be attached to the record and marked Exhibit No. 92.

Q. When did work begin on this contract?

A. On the first of October, 1891.

Q. And closed, when?

A. 3st, of October, 1891.

Q. When did the contract of John F. Gaynor for work in Cumberland Sound, Fernandina, close?

A. 14th, of November, 1891.

997 Do you know who William H. Walsh is?

A. I have seen him once, but I do not know him now, I would not recognize him. I have been with him with the surveying party once in 1886, but I do not remember him.

Q. Is that the last time you saw him?

A. To my knowledge, yes.

Q. Have you ever seen his name in official papers here otherwise than in this bid?

A. There was another bid, there was another contract.

Q. There was another contract on which the same party bid?

A. Yes, sir.

Q. You simply know the fact, you don't know of his being here, and did not see him?

A. I did not see him.

Q. Give me those two proposals mentioned in the ab-

stract. (Here the witness hands the Judge Advocate the papers)

Judge-Advocate: I offer in evidence the proposals of Edward H. Gaynor, and William H. Walsh, referred to in the abstract just read; copies of them will be attached to the record, marked Exhibit No. 94 and Exhibit No. 95.

Q. Look at the writing in these two proposals and state, if you know, whose writing it is.

A. There is a different handwriting on these proposals.

Q. Written by different hands?

A. Yes, sir.

Q. How about the other, is that all written in one hand?

A. That is written in one hand, except as to the signature.

Q. Do you find any part written in those proposals that is the same handwriting as in the other?

A. Yes, sir.

Q. What part?

A. The prices are filled out in the same hand.

998 Q. In figures?

A. That is to my best knowledge, by comparing one dollar; it looks as if it has been written by the same man.

Judge-Advocate: I state to the Court that these proposals are the proposals referred to in the abstract.

The President: Two separate proposals?

Judge-Advocate: Yes, Edward H. Gaynor and William H. Walsh, the only two proposals that were received.

Q. And those are the proposals that you handed me of Gaynor and Walsh?

A. Yes, sir.

Q. Are you familiar with John F. Gaynor's handwriting?

A. I have seen it.

Q. Are you familiar with John F. Gaynor's handwriting?

A. He writes a very characteristic hand.

Q. Whose handwriting is that? (Upon interruption by Rose) Well, have you ever seen Mr. Gaynor write?

A. Yes, sir, I have seen him write.

Q. You have seen him write, that is the response to my question?

A. In the office, and the letter was copied in our copy book; he wrote an application.

Q. Well, give your judgment on that. (Handing witness a paper)

A. That looks very much like his writing, but it is written better than he usually writes.

Q. How is as compared, I hand you again the proposal of William H. Walsh, Exhibit No. 95,—how is it in the writing, compared with that there, the amounts inserted in the proposal?

A. This looks like the same handwriting, 99 cents,—and this proposal, 90 cents, it looks like it. This is written with a finer pen than that, and the one dollar.

Q. You put the similarity between cents?

A. This cents and that cents.

Q. The cents in which and the cents in what other?

999 A. The cents are nearly alike, but are written with different pens.

Q. As to construction and characteristics, they are alike?

A. They resemble his handwriting.

Q. I show you Exhibit No. 35, the proposal of The Atlantic Contracting Company, that is already in evidence, calling your attention to the handwriting, filling in the proposal,—do you recognize that?

A. It looks like the handwriting of John F. Gaynor.

Q. Comparing it with Exhibits 94 and 95, which you have been looking at before, where the amounts bid are carried out in both of those proposals, compared with that you have just testified, looks like the handwriting of John F. Gaynor, and see if they are by the same hand?

A. It looks the same handwriting.

The President: What two proposals are those?

Judge-Advocate: The same proposals that we have examined where the two bids were put in, one in the name of William H. Walsh, and the other Edward H. Gaynor.

Judge-Advocate: I offer now in evidence the Articles of Agreement entered into July 20, 1891, between O. M. Carter, Capt. Corps of Engineers, U. S. A., and William H. Walsh, Fernandina, Fla., for constructing spur jetties near Fort Clinch, Fla. A copy of this will be attached to the record and marked Exhibit No. 96; the witnesses to the signatures of Capt. Carter and William H. Walsh, are Michael A. Connolly and George D. Meigs. Prior to the name of William H. Walsh, is in pencil, "Sign here."

Q. Who is George D. Meigs?

A. George D. Meigs was the assistant engineer, employed in Savannah Harbor.

Q. Where was he on the date of the execution of that contract, if you know?

1000 A. He was in Savannah Harbor; he was assistant engineer, in charge of jetty constructions, in Savannah Harbor on that day.

Q. Do you know if he was in Savannah?

A. He signed a report on that day.

Q. What does that pencil memorandum, "Sign Here" mean?

A. That indicates the place where Mr. Walsh should sign.

Q. Well, if he signed it at the date there, it would naturally follow Capt. Carter's signature, would it not?

A. Mistakes are made sometimes; they sign them wrong; that is a precaution that has been put, "Sign here."

Q. Do you know if William H. Walsh was in Savannah on that day?

A. I do not.

Q. I also offer in evidence the contractor's bond, dated the 20th, of July, 1891, with William H. Walsh as principal, and W. F. McCaully, and Charles C. Ely as sureties in the penal sum of $7,500.00; witnessed by George D. Meigs, R. Webb, Jr., and R. Webb, Jr., twice written, to be attached to the record and marked exhibit No. 97.

Q. Whose writing is that bond filled out by?

A. This is filled out by Mr. Connolly and this here by Mr. McCaully.

Q. There are two writings?

A. Yes, sir.

Q. Then Mr. Connolly was in the employment of the Government in Savannah at that time?

A. Yes, sir.

Q. How long was Mr. Connolly on duty in the office of the engineer here?

A. Mr. Connolly came to this office, I think it was in September or October, 1888, and remained until the 3d, the 2d, or 3d, of August, 1897.

1001 Q. Shortly after Capt. Carter's being relieved from duty here?

A. Yes, sir.

Cross-Examination.

Questions by Mr. Rose.

Q. Will you let me have Vouchers 8 and 9, for the payments in 1897? (To Judge Advocate). I hand you Voucher 8 and ask you to look at the bills attached to it and state whether on them appear your initials.

A. Yes, sir.

Q. Each one of them?

A. Yes, sir; that indicates that the computation is correct.

Q. There is a certificate on each one of those, is there not, that it is correct, signed by the assistant engineer?

A. Yes, sir.

Q. Who was assistant engineer?

A. E. A. Gieseler.

Q. In his own handwriting on each one of them?

A. The name occuring on each one is written by me and is approved by the assistant engineer.

Q. In whose handwriting is "E. A. G."?

A. In his own handwriting.

Q. On each one of those bills?

A. Yes, sir.

Q. Now, I show you Voucher No. 9, in relation to Cumberland Sound, and ask you if each one of those bills bears your initials?

A. Yes, sir.

Q. And it is certified by Mr. Gieseler that it is correct?; E.

A. Gieseler, that it is correct appear on each one of them, that is as far as his name goes.

A. Yes, sir.

1002 Q. I show you Exhibit No. 92, which is the bond for the faithful performance of the contract for constructing jetties at entrance to Cumberland Sound, Georgia and Florida, and ask you in whose handwriting the body of that bond is; the body of the bond purports to be signed by B. G. Green, John F. Gaynor, &c., in whose handwriting is the body of that bond?

A. That is my own handwriting.

Q. That was filled up by you while in office?

A. Yes, sir.

Q. The Judge-Advocate said you were not called as an expert, were you called as an expert in handwriting?

A. No, sir.
Q. You don't pretend to be an expert.
A. No, sir.
Q. You have seen John F. Gaynor sign his signature just once?
A. Just once, that is, write it once.
Q. I asked you if you have ever seen him write his signature except once?
A. Only once.
Q. In reading a letter of Mr. Buchardi, you stated the date of April 9th,—will you tell me when that appears to have been received in Savannah?
A. April 15.
Q. The reply was written on April 16th,—was it not, or the same day, I don't remember which?
A. on the 15th of April.
Q. The 15th, of April?
A. Yes, sir.
Q. And that letter on the 15th, of April, sent to Capt. Carter, is in reply to the one that you have in your hand?
A. Yes, sir.
Q. Will you look at Exhibits 88, 89 and 90, and tell
1003 me what the prices according to the proposals are?;—
for the different kinds of mattresses; this is an Exhibit 90, now?
A. $1.22 for brush mattresses, $1.22 per square yard for log and brush mattresses.
Q. That is all. Now, give me the same information in reference to Exhibit 88?
A. $1.16 per square yard for brush mattresses, and $1.20 per square yard for log and brush mattresses.
Q. $1.16 and $1.20. Now look at Exhibit 89 and give me the same information.
A. 97 cents for brush mattresses and 99 cents per square yard for log and brush mattresses.
Q. Referring to Exhibit No. 89, will you be kind enough to state before whom the sureties justified, that being the proposal of John F. Gaynor for constructing jetty at entrance to Cumberland Sound?
A. Certified to before S. F. B. Gillespie, U. S. Commissioner.
Q. Do you know Mr. Gillespie?
A. Yes, sir.
Q. He is the Deputy Clerk of the U. S. Court, here?

A. I think that is his title.
Q. And is also U. S. Commissioner, he was then at least?
A. He was at that time.
Mr. Rose: I would like to have it put upon the record and call the attention of the Court to the certificate attached to this proposal and signed by Mr. Gillespie. (Reading)
"I, S. F. B. Gillespie, U. S. Commissioner, do hereby certify that B. D. Green, and Henry Berg, the guarantors above named, are personally known to me, and that to the best of my knowledge and belief, each is pecuniarily worth over and above all his debts and liabilities, the sum stated in the accompanying affidavits, subscribed by him.
S. F. B. Gillespie, U. S. Commissioner."
1004 At this point in the proceedings of the day, 1:00 p. m., Reporter Geo. T. Cann was relieved by Reporter W. O. Tarver.

ROYAL SAWYER, (colored) a witness for the prosecution being duly sworn, testified as follows:

Direct Examination by the Judge-Advocate.

Q. What is your full name?
A. Royal Sawyer.
Q. Where do you live?
A. I live at the five mile bend,—five miles out on the Augusta Road.
Q. What do you work at?
A. I don't work anyways now particular; I am planting now mostly,—running a farm.
Q. Where were you at work in 1893?
A. In 1893, I was working then down to Thunderbolt.
Q. Who were you working for?
A. Mr. Tom Gaynor.
Q. How long did you work for him?
A. Up until 1894.
Q. Do you know what month in 1894?
A. I left there in July, 1894.
Q. What kind of work were you doing?
A. Tying brush handles.
Q. What kind of brush bundles?
A. 15 feet long.

Q. What were they to be used for?

A. Sinking on the jetty,—put down on the mattress,—carry it down, and make on mattress of it, and sink it on the timber.

Q. How did you make them?

A. We had a twister, a pole with ropes about that (indicating) long run through each end, and to the center of the pole, and two men would turn the stick, and one cut the brush and two tied.

Q. Two men were working with you in making the bundle?

1005 A. There was three men to the bench, one chopping and two tying,—one at the head of the bench.

Q. How much did you get a day for your work?

A. I was getting then 80c a day.

Q. Was that conditioned upon any amount of labor you should perform?

A. Yes, sir; that was what they was giving all the laborers then.

Q. You don't understand my question. Were you to be paid eighty cents a day no matter how much or how little work you did?

A. No, sir; fifty bundles was the day's work,—nothing less and nothing over.

Q. You had to produce fifty bundles a day to earn eighty cents?

A. Yes, sir.

Q. That was for the three men to produce, and not one man; the team of three men must make fifty bundles a day?

A. Yes, sir.

Q. I wish you would describe how you made one of those bundles?

A. We cut the poles—Had one man to cut the brush, and we cut the poles about fifteen feet long. If not, we had the pole go to about the center of the bench, and then we joined it, and took the brush, and one man would hold the twister while the other tied it, and put three strings between each of the feet. We had one foot in the center and two feet like them on each end of the bench, and then one cut the brush, any kind of brush it made no difference what kind, and we had a long pole that goes through there, so it would not buck, and we made that fifteen feet long, and put six or seven strings on the bundle.

Q. What kind of string did you use?

A. A little tarred string not quite as large as my finger.
Q. Twisted string?
A. No, sir; it wasn't twisted.
Q. How tightly could you tie them together in the way you have described?
A. We could make it as tight as we could hold it sometimes, according to how large a bundle would be. If we
1006 had soft brush it could not be tied so tight; sometimes, if it was hard poles, then it would be tighter.
Q. Was any standard given you, or any bundle of brush given you as a guide for you to make the bundles by?
A. No, sir.
Q. As to the size?
A. No, sir.
Q. As to the tightness with which they should be drawn together?
A. They only told us how they wanted them, but give us nothing to do it by.
Q. Was there anything in the kind of bundles you made? Did you have to make fifty bundles that would be accepted?
A. If we made fifty bundles, and they docked us, and took away ten or fifteen bundles, they didn't pay us for that.
Q. Then you made bundles that were not accepted?
A. They rejected some of them?
Q. Who rejected them?
A. The foreman.
Q. Who was Foreman over you?
A. Ed Burke was foreman then, but I was foreman once before I went into his gang.
Q. What became of those rejected bundles?
A. Hauled them down and put them in the mattresses the same as the others.
Q. You say that rejected bundles were taken away and put into the mattresses?
A. All hauled down.
Q. How many times did you see that?
A. Ever since I first started, and I commenced work in 1883 and worked until 1894.
Q. You commenced in 1883, and worked on what?
A. Making log mattresses then, and I worked until they commenced making the brush bundles.
1007 Q. When did they commence making the brush bundles?
A. I don't remember the year. Didn't keep any remem-

brance of it, but I was the first one that ever built a bench up here at Springfield on the Savannah River, and them times, they tied with wire then.

Q. Tied with wire first?

A. Yes, sir?

Q. When did they begin to tie with string?

A. Didn't tie with wire but about a month, and they tie with strings all fascines until now.

Q. You worked for Mr. Gaynor from 1893 to 1894?

A. Yes, sir.

Q. Will you go back and look at those bundles of brush on that platform?

A. (The witness did so) Yes, sir; some of them was the same kind, only they are dried out, and the leaves are away from between them; that is the difference.

Q. Those are like the ones you made in that eleven years?

A. Yes, sir.

Q. Did you ever make any better than those?

A. Looks much better when they have the leaves in it, but when the leaves dried down and dropped off, they was no better than them.

Cross-Examination by Mr. Charlton.

Q. Were you working for anybody else from 1883 to 1894? Were you always working for Mr. Gaynor during that time?

A. No, sir; I worked first for Mr. Welsh and Mr. Ed. Gaynor. I commenced over in Red Bluff with Willie Welsh, and after he went from the camp, I went to Mr. Nicholas' camp.

Q. And during that time, you were doing that kind of work from one camp to the other?

A. Yes, sir.

Q. Is that the best work you did during all that time, 1008 making bundles of brush like those (in Court room)?

A. Yes, sir; but when the leaves was in it, they looked better.

Q. You did the best work you could?

A. Yes, sir.

Q. What did those things look like which they rejected on you?

A. One was no better than the other, but they took the money away from us, and we had to do the best we could. The highest we got was sixty cents a day.

Q. Who was in charge in 1883, do you remember?
A. The head boss?
Q. Yes?
A. No, sir; I knew Capt. Green was one.
Q. You don't know who the United States Officer was in 1883?
A. No, sir; never heard of the big men at all.
Q. Did you go away from the camp? Were you in the camp all the time during the day while they were working on this brush?
A. Yes, sir.
Q. When were you foreman?
A. Down to Bonaventure and down to Sand Fly.
Q. How long ago was that?
A. In 1883.
Q. Now, you were at the camps all the time?
A. Yes, sir; at the camps.
Q. How did they get these bundles of brush down to the works?
A. Hauled them down in wagons.
Q. And then they put them on a boat?
A. On what they call a barge, and carried them down the river.
Q. Did you ever go with them?
A. No, sir. Staid at camp.
Q. Therefore you don't know what became of them after they carried them away?
A. No, sir.
Q. Your business was at the camp?
1009 A. Yes, sir.
Q. And you were doing the best you could to earn your money and sometimes they threw out bundles and took your money away from you?
A. Yes, sir.
Q. How long were you foreman?
A. Four months.
Q. Did you throw out anybody's bundles?
A. I had to do it; I had to or I wouldn't get anything myself. Sometimes when I could, I would try to slip it; I would help the boys out when I could. I knew how it was myself.
Q. But when the contractor was looking, you threw out bundles to please him?

A. When he was close up I did, but when he wasn't, I helped the boys out a little.

Re-Direct Examination by the Judge-Advocate.

Q. The teams that took the rejected bundles away were the same teams that took away the bundles that had been accepted?

A. Yes, sir.

Q. Who was Willie Welsh that you speak of?

A. He was a big, stout man.

Q. Was his name Welsh or Walsh?

A. We called him Welsh,

Q. What was his business?

A. He was boss of the camp and teams.

Q. Employed by Mr. Gaynor?

A. Yes, sir.

Q. You were employed by Mr. Gaynor and Mr. Walsh was his foreman at that time?

A. Yes, sir.

Q. What kind of mats were they making when you 1010 first worked there in 1883?

A. Making log mats.

Q. When they first commenced to make brush mattresses, were you there?

A. I could not tell you the year they commenced to make the brush mats. I never kept a remembrance of that year at all, and I wouldn't like to tell you what wasn't right.

Q. Was it soon after or sometime after you commenced to work there?

A. A good while; as far as I can remember, I think about in 1884. it was when they commenced the brush work, if I make no mistake.

Q. You can't remember the year when they first commenced?

A. No, sir; away back that far.

Q. Do you remember who was the foreman at the time you commenced? At the time you first commenced to make bundles of brush?

A. Ed Burke.

Q. Foreman of all the work?

A. No, sir; Mr. Wheeler was head foreman, a white man.

Q. I am speaking of the head foreman?

A. Mr. Wheeler was camp boss.

Q. Who was foreman of the brush camp?
A. Mr. Wheeler.
Q. Was that before or after Mr. Welsh or Mr. Walsh?
A. Mr. Welsh was foreman on the log work, but that was over on—
Q. I mean where you were at work?
A. Yes, sir.
Q. Do you remember what time it was when Mr. Walsh was foreman over you?
A. Yes, sir; he was foreman over me in 1884, I think was the first day I worked with him.
Q. How long did you continue to know him?
A. I knowed him from 1884; I knowed him when he first come from the North in 1884.
Q. How long afterwards did you know anything about
1011 him,—where he was at work?
A. The last I worked with him was, I think, in 1894; I worked with him one month.
Q. What were you doing then?
A. Tying brush then.
Q. Who for?
A. The same Company.
Q. What Company?
A. Atlantic Contracting Co.

Re-cross Examination by Mr. Charlton.

Q? Do you remember whether you made any brush fascines, or brush bundles, at Springfield in Effingham County?
A. No, sir; that was in Abercorn that we made the brush bundles.
Q. That is near Springfield?
A. No, sir; Abercorn is up here.
Q. In Effingham county?
A. Yes, sir; fifteen miles.
Q. You made these bundles of brush up there?
A. Yes, sir.
Q You don't remember when that was?
A. In 1894.
Q. 1894 or 1884?
A. 1894.
Q. Were you not up there a great many years ago?
A. Yes, sir; but I worked won here in 1884,—Springfield

right up here,—and then left here and went over to Red Bluff in Carolina.

Q. Springfield is not a half mile from here?
A. Three miles.
Q. Whose place?
A. Mr. Taylor—
Q. Henry Taylor's place?
A. No, sir; but he looked over it.
1012 Q. Over on the Island?
A. No, sir; he has one place on the Island, but he has a place over here too.
Q. And that is the place you called Springfield?
A. Yes, sir.
Q. And you were up at Abercorn, too?
A. Yes, sir.

ELISHA WINTER, (colored) a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by the Judge-Advocate.

Q. What is your full name?
A. Elisha Winter.
Q. Where do you live?
A. I live now in Chatham County.
Q. Have you ever been employed chopping wood to make bundles of brush?
A. Yes, sir.
Q. When was it?
A. It is pretty hard for me to tell exactly about the date, but I worked for Capt. Green and Mr. Gaynor, and then another gentleman, partner with him when he first come out here.
Q. How many years ago has that been?
A. Been considerable time; when the first commenced to work. I didn't keep track at all of the dates.
Q. Have you ever done any work of that kind on the upper Savannah River?
A. I worked here where they call the Banks; it is between the five and four mile road on the Augusta side of the River.
Q. Up near Augusta?

A. No, sir; between the four and five mile post on the Augusta Road on the River, where we worked.

1013 Q. Did you ever work making bundles of brush?

A. Yes, sir.

Q. What were they to be used for?

A. They called them fascines, to be put on mats; built the mats first and then afterwards helped get the brush.

Q. How many did it take to make a bundle?

A. Three men to the bench.

Q. You were one of those three?

A. Yes, sir; I was one.

Q. What part of the labor did you perform?

A. Used the cuttin axe,—chopping axe we called them.

Q. What did the other two men do?

A. Twisted and tied.

Q. Who were you working for then?

A. Under the instructions of Mr. Wheeler at first.

Q. Mr. Wheeler was your employer?

A. Yes, sir.

Q. Was he your employer, or the superintendent of the work?

A. Superintendent of the work; my foreman was Ned Burke at that time; he over looked all the bundles we prepared during the day to see if they would pass.

Q. How much were you paid a day?

A. Paid different prices. I first worked for that firm for one dollar a day one season, and when they come out again, they knocked us to 75¢, and they fell from that season to the third season, when they knocked us down to 60¢ and I quit.

Q. Was that 60¢ for each of the three men?

A. No, sir; they made a distinction. The man at the bench got more; he was responsible, or supposed to be, for the bundles,—the size,—supposed to make them suitable for the boss to inspect and when they were not made to the satisfaction of the boss, we were not responsible for the size of the bundles,—he was the one to be responsible,—yet we

1014 didn't get any money if they wasn't allright. I have had the last one throwed away from me, and I taken my knapsack and walked home.

Q. How many did you have to do?

A. Fifty bundles to tie between three men, and I had to chop brush enough for the fifty bundles.

Q. What kind of brush did you cut?

A. Anything we could get,—pine, myrtle, sweet-gum, and

all other kinds that grew in the woods that want too large, and a great many times, climbed a pine tree and cut it down, to get brush for to make the bundles.

Q. Were you paid 60¢ a day for cutting the brush and furnishing it to the two men to bundle up?

A. Yes, sir.

Q. Regardless of the number of bundles accepted to be used?

A. Well the same brush I cut would make fifty bundles, and I had to cut enough to make fifty bundles, or didn't get paid for the day's work.

Q. Suppose you did cut brush enough to make fifty, and fifty were not made, did you get your day's pay?

A. No, sir; I was paid by the number turned out from the bench.

Q. Now, if the full number had been made but the full number was not accepted, what took place then?

A. I only got paid at the rate of whatever the bundles accepted would come to at 60¢ a day.

Q. Did you see many bundles rejected?

A. Yes, sir; there want a day but what four or five up to a third of them would be throwed away.

Q. What became of them?

A. I saw them hauled out of the woods; I don't know, sir.

Q. Who did you see haul them out of the woods?

A. The teamsters.

Q. The same teamsters who hauled the others?

A. Yes, sir; took them that was throwed out, and 1015 hauled them down to the barges.

Q. How long ago was this last work you testified to?

A. The last time they cut up here at Abercorn.

Q. You don't fix the date?

A. No, sir.

Q. Only the fact that Mr. Walsh was foreman?

A. After that, I quit under Willie Welsh. Capt. Wheeler sent me to Bonaventure under Willie Welsh, and I said, "Captain, what are you going to allow me?" and he said, "Well, being as you are a good hand, if you will go down to Bonaventure, I will see that you get $1.25 a day and get a bench in charge," and I went down there and worked for a day, and I went to Willie Welsh and said, "Capt Wheeler sent me down here to you under instructions that you would give me $1.25 a day," and he said, "No; we can't give that;

we can get all the men we need here for fifty and seventy-five cents a day, and don't need you," and I didn't work again for him until the last time he worked at Abercorn.

Q. What kind of man is Mr. Walsh?

A. He weighed about two hundred pounds.

Q. And you called him familiarly "Willie?"

A. I called him Mr. Welsh.

Q. He was the foreman?

A. Foreman or superintendent.

Q. Who was the foreman, do you know?

A. Mr. Green or Mr. Gaynor from all the instructions I could get.

Q. Can you fix the year that you went down to see Willie Welsh?

A I could not myself, because I don't exactly know; it was the season when they quit work up here, and went to Bonaventure.

Q. Five years ago or ten years ago?

A I don't know, sir, about the time; I could not give exactly the date they left off work up on the Savannah River.

1016 *Cross-Examination by Mr. Charlton.*

Q. When you started to work there, they were building the log mattresses?

A. When I first started.

Q. Do you remember the Lieutenant that used to come up on the tug?

A. I don't know that I would know him if I was to see him now.

Q. You don't remember his name?

A. No, sir; he knows me I guess; he took my name, and said that was the way he wanted the brush made, and Mr. Green would keep me there to see that it was fixed up in that way.

Q. Would you know his name if you heard it?

A. I don't think I would.

Q. You don't remember the year when you first started?

A. No, sir.

Q. How long after the war?

A. A good long while after the war, because I don't think it has been but five or six or eight or nine years since I worked for them.

Q. How long before the yellow fever?
A. Sometime after the yellow fever.
Q. When you first worked on the log mattress?
A. Yes, sir.
Q. You were working on that matter when they first started building these bundles of brush?
A. I worked for them when they built the first mat for the jetty work, but they moved from there, and come down to the Banks the following season. They generally goes away from here to the North, and when they come back, I would fall in with them again.
Q. How many years did you work for them?
A. I worked with them four seasons.
Q. In succession, one right after the other?
A. No, sir; they went down here to Red Bluff, and it was too far, and I didn't get money enough, and I wouldn't go down with them.
1017 Q. You were working with them building log mattresses?
A. Yes, sir.
Q. And worked with them when they started to build these bundles of brush?
A. Yes, sir.
Q. You did your work well?
A. Yes, sir.
Q. The best you knew how?
A. Yes, sir.
Q. You did good work?
A. That was with them.
Q. You had the reputation of doing good work?
A. Yes, sir.
Q. And you say sometimes they would take some of your work and throw it out, and say it wasn't the kind they wanted, and dock your pay?
A. Yes, sir.
Q. Those bundles that they took away, and said you hadn't done good work on, were just as good as those they did pay you for, weren't they?
A. They said not, but they used them.
Q. Didn't they seem to you to be just as good as the others?
A. Yes, sir.
Q. You saw no difference in them?
A. The only difference I saw was that I didn't get paid

for them. I lost a square day's work once. I had a contest with my foreman about it, but I had to lose it just the same.

Q. Who was the foreman?

A. Ned Burke was supposed to be our foreman.

Q. Did he throw out any of your fascines?

A. Yes, sir.

Q. Did you work under Royal Sawyer?

A. No, sir; I don't think I worked much under Royal; he may have inspected some, but not many.

1018 Q. When the contractor was looking, he would throw out your bundles?

A. Yes sir.

Q. And when he was not looking, he would pass them?

A. He was pretty strict when he wasn't there, too.

Q. And finally used you so hard that you quit?

A. Yes, sir.

Q. Drakey is Mr. Taylor's place?

A. No, sir; it is Mr. Keller's.

Q. What place did Royal refer to up here as Springfield?

A. I only know it as the Banks place.

Q. How far?

A. Between the three and four mile stone, which would make it five miles from the City where they worked the way they went.

Q. Were you working there at the same time Royal was?

A. Yes, sir.

Q. Now, those bundles that they would not pay you for, and threw out were they tied up as tight as the others?

A. They claimed not.

Q. I am asking for your judgment?

A. We would fix them just the same; we would not know one from the other.

Q. You tried to fix them the best you could?

A. Yes, sir.

Q. And yet these people came along, and would not use the bundles and woyld not pay you for them?

A. Yes, sir.

Q. But you did the best you could, to try to get your money?

A. Yes, sir.

Re-direct Examination by the Judge-Advocate.

Q. How long ago did you work under Mr. Walsh the last time?

A. I don't know, sir; the last time I worked under
1019 Mr. Welsh was when he was up at Abercorn; that is all I know.

Q. Is that the last time you ever saw him?

A. That is the last time I ever saw Mr. Welsh; I haven't seen him since.

EDWARD BURKE, (colored) a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by the Judge-Advocate.

Q. What is your full name?

A. Edward Burke.

Q. Where do you live?

A. Up in the woods three miles from Savannah.

Q. Where were you at work in 1892?

A. Up here between the four and five mile post,—up here to the Taylor place.

Q. What were you doing?

A. Foreman in the woods, making fascine bundles; making these same bundles of brush.

Q. You were foreman?

A. Yes, sir.

Q. How many men did you have under you?

A. Some weeks I had sixty and fifty, and all like that,—from fifty to sixty men.

Q. How many men did it take to make a bundle?

A. Three.

Q. What was their different work?

A. Two men to the bench and one chopping.

Q. Do you know what pay they received for it?

A. Yes, sir.

Q. How much?

A. In 1892, he was paying one dollar to the man; that
1020 was three dollars for the fifty bundles; that was in 1892.

Q. He paid a dollar to each of the men,—to each of the

three men; the man who cut the brush and the men at the bench got the same rate of pay?

A. Yes, sir.

Q. Now, how much work did they have to do to earn that pay?

A. Fifty bundles.

Q. If they didn't make fifty bundles a day, their pay was reduced?

A. Yes, sir.

Q. If any of the bundles were not accepted, what took place?

A. Yes, sir; if any bundles was dumped, of course, he always hauled it, and never left it there.

Q. If they made fifty bundles, and they were not all accepted, how much pay did they get then?

A. Pay for what was accepted. If they made fifty, and took out ten, they got pay for forty.

Q. That is at the rate of $1.00 a day for fifty bundles as a day's work, and they only got paid at that rate for forty if ten were thrown out?

A Yes, sir.

Q. What became of those bundles that were rejected?

A. Hauled them down to the tug.

Q. Who hauled them down to the tug?

A. The wagon carried it down there.

Q. The same teams that took away those that were not rejected?

A. Yes, sir; the same teams.

Q. Now, in 1894, where did you work?

A. Up to Abercorn, between fourteen and sixteen miles.

Q. Who was superintendent in 1892 over you?

A. Arthur Wheeler and Jack Sweeney.

Q. Now, in 1894, where were you working?

A. Between fourteen and fifteen miles up.

1021 Q. On the Savannah River?

A. On the Savannah River.

Q. Who was your superintendent?

A. A man by the name of Jane Nicholas.

Q. Do you know who was the contractor doing the work?

A. The Gaynors; all I know is Mr. Ed Gaynor.

Q Were you a foreman there?

A. Yes, sir.

Q. How many men were employed there?

A. I was running up to about seventy some days.

Q. How much were the men paid that year for their labor?
A. In 1894, sixty cents a day for fifty bundles.
Q. Where did you work last year?
A. Last year I didn't stay with them over a month, and that was in South Carolina. I went over there and staid there a month. He promised to pay me $1.25 a day, and after I got there, they wouldn't pay me but a dollar a day, so I didn't stay but a month, and quit. I worked over there about forty men. While I was there, he was paying them at the rate of three cents a bundle.
Q. He wasn't paying them by the day then?
A. No, sir; three cents a bundle.
Q. Do you know how much the men earned a day?
A. Yes, sir.
Q. Were there many rejected when they were paying three cents a bundle?
A. No, sir; in the month I was there, they didn't reject any at all; because they got such small pay, they could not reject any.
Q. I saw you look at your cuff; have you a memorandum upon it?
A. Yes, sir.
Q. What is that for?
A. That is just the year; I could not remember it.
Q. I wish you would go back and look at those bundles on that platform and handle them.
1022 A. (The witness looked at the bundles as requested)
Q. Are those anything like the bundles that were made when you were foreman?
A. No, sir; I made them better than that.
Q. You did make them better than that?
A. Yes, sir.
Q. If they were no better than that, you rejected them?
A. That is so.
Q. How did they look as compared with those?
A. What I used to make would go twelve inches all the way through, and string was tied around it.
Q. You had to make them twelve inches?
A. Yes, sir.
Q. Were your instructions to make them twelve inches?
A. Yes, sir.
Q. Who instructed you to make them twelve inches?
A. The boss over me.

Q. Who was he?
A. Jane Nicholas.
Q. The bundles you made had the brush on them?
A. Yes, sir.
Q. You never saw any of the same bundles after they got dried up, and in that (bundles in court room referred to) condition?
A. Oh, yes, sir.
Q. Where did you see them?
A. On the yard sometimes; there would be old bundles laying around there.
Q. How long?
A. Sometimes a month or so.
Q. Could a bundle of brush get to look in a month or two like those do you think?
A. By laying down on the yard in the winter time; 1023 would not be like that in the summer, because everything was green.
Q. You don't understand my question. Could a bundle of brush,—brush such as you superintended the making of, become as light and dry as that in a month or two?
A. No, sir; it would not turn as dry as that.
Q. Have you ever, then, seen any of those you made as dry as those in the Court room?
A. No, sir.
Q. Have you ever seen them with the leaves taken off of them?
A. No, sir.
Q. Then you cannot very well compare thos (in the Court room) with the ones you made?
A. No, sir.

Cross-Examination by Mr. Charlton.

Q. Your name is Edmund Burke?
A. Yes, sir.
Q. Whilst you were there, you did honest work?
A. Yes, sir.
Q. Did the best you could?
A. Yes, sir.
Q. And they told you they wanted them twelve inches through?
A. Yes, sir.

Q. You choked them up as tight as you could?
A. Yes, sir.
Q. And when they didn't choke them up tight that way, what did you do?
A. Rejected them.
Q. But, as far as you knew how, you did the best you could under those instructions?
A. Yes, sir.
Q. What is that you have got on your cuff?
1024 A. That is just to keep me in memory; that is 1892.
Q. Is that your writing? Did you write it?
A. No, sir; I only put that down.
Q. Who wrote it for you?
A. I put it there.
Q. Who told you to?
A. I told myself.
Q. You just wanted to remember the dates by it?
A. Yes, sir; just the years.
Q. Some of these boys talked about a choker; do you remember a choker at the camp,—the thing that they tied the bundles up with?
A. Yes, sir.
Q. Did they have a choker there?
A. Yes, sir.
Q. How many men worked on that choker?
A. Two.
Q. One on each side?
A. Yes, sir.
Q. When they choked it down, who tied it up?
A. One held the stick after they choked it, and the other man done the tying.
Q. The other man tied it up?
A. Yes, sir.

Re-direct Examination by the Judge-Advocate.

Q. You say that, in choking, one man could hold it while the other tied the string?
A. One man to hold it after the two choked it.
Q. How long a stick was used in the choking,—for the choker?
A. You can choke one fifteen foot bundle in about five or seven minutes.

Q. Not how long it took, but how long were the levers,
1025 the handles, what you choked it with,—the sticks?
A. Stands about three feet.
Q. Do you mean the horse on which the brush rests?
A. No, sir; here is the choker with a hole in the center, and that is about three feet long.
Q. Then one and a half feet on each side; that is what you mean?
A. Yes, sir.
Q. And how long was the rope attached to it?
A. What you twist it with?
Q. Yes?
A. Sometimes the rope would be three and a half and sometimes four feet long.
Q. The rope on the choker?
A. About four feet or something like that.
Q. Do you know Willie Welsh or Walsh?
A. Yes, sir; I worked with him a while.
Q. Where?
A. In South Carolina.
Q. How long ago?
A. Awhile in 1891.
Q. In what part of the year, do you remember?
A. No, sir; somewhere about the first of May, I think.
Q. What were you doing then?
A. Building these same bundles of brush.
Q. He was the foreman of the brush camp?
A. Yes, sir; I was foreman awhile. I was foreman I suppose about four months after I went over there.
Q. Was he foreman of the brush camp, or foreman of other kind of work?
A. No, sir; the brush camp.
Q. Had nothing else but that?
A. Not at that time.
1026 Q. Was he a white man?
A. Yes, sir.
Q. Who did he work for, do you know?
A. Mr. Gaynor.
Q. Which Mr. Gaynor?
A. Mr. Ed Gaynor.

RUFUS HABERSHAM, (colored) a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by the Judge-Advocate.

Q. Tell me your name in full?
A. Rufus Habersham.
Q. Where have you been at work recently?
A. I been at work at different places.
Q. Where were you at work in 1893 and 1894?
A. Working for Mr. Gaynor.
Q. Where?
A. My first commencement was 10 miles out from Savannah.
Q. What year was that? That was in 1894, was it?
A. 1894.
Q. How far from Savannah?
A. About ten miles.
Q. What were you doing?
A. Chopping logs and chopping down trees.
Q. What were they used for?
A. They was using it for jetty work; that was what they said.
Q. Were you engaged in that year in the making of bundles of brush?
A. No, sir; I was engaged in chopping down trees.
Q. What were you doing in 1895?
A. In 1895, they came down to between the five and,—about three miles from Savannah.
1027 Q. Who did you work for then?
A. Mr. Gaynor.
Q. What doing?
A. Chopping logs there.
Q. Were you engaged in the making of bundles of brush that year?
A. Well, I did in the latter part, engaged in making brush.
Q. Who was your foreman?
A. Ned Burke.
Q. Did you make these bundles?
A. Yes, sir.
Q. Do you know what they are called?
A. That is all I knew of them,—called them bundles for jetty work.

Q. You worked yourself in making the bundles?
A. Yes, sir.
Q. How many men with you?
A. Had two besides myself.
Q. What part of the work did you do?
A. He give me the head of a bench.
Q. What did the other two men do?
A. One was chopping, and the other one held the choker while I tied the bundles.
Q. How long were the bundles you were required to make?
A. Fifteen feet.
Q. How large through?
A. Twelve inches through.
Q. How many bundles a day were you required to make?
A. They allowed fifty bundles for our day's work.
Q. How much pay did you receive a day?
A. For making thse bundles, I didn't receive but eighty to seventy-five cents.
Q. From eighty to seventy-five cents a day?
A. Yes, sir.
1028 A. Yes, sir.
Q. Did you get that if you didn't make fifty bundles a day?
A. I made fifty bundles every day, and then didn't get paid, because some of the bundles were rejected; these bundles that were rejected, I didn't get no pay for.
Q. How many bundles were rejected of your work?
A. I have had a whole day's work rejected, and was authorized to come back the next day to over-wrok them,—cut them loose, and repair them over, and, when I went back the next morning, they was all gone.
Q. When you went back to get the material to have them made over, they had disappeared?
A. Yes, sir; and I got no pay for it at all.
Q. Did you ever work at the same business after 1895?
A. Yes, sir.
Q. Where?
A. At Gibbons Landing.
Q. Who did you work for then?
A. I don't know who the employer was, but the same foreman, Ned Burke.
Q. Do you know who the white man was that was superintendent?

A. No, sir.
Q. You worked upon the same business?
A. The same business.
Q. You had other men with you?
A. Yes, sir.
Q. You were one of a team of three men?
A. Yes, sir.
Q. How much pay did you receive a day then?
A. Received sixty cents a day then.
Q. Each of you?
A. Yes, sir.
1029 Q. How many bundles did you have to make a day to entitle you to sixty cents a day each?
A. Fifty bundles.
Q. Just the same number that you had been required to make before?
A. Yes, sir.

Cross-Examination by Mr. Charlton.

Q. When did you say you first started?
A. My first commencement with Mr. Gaynor was at Drakey's place.
Q. Up the River here?
A. Up to Monteith chopping logs.
Q. In 1894?
A. 1894 as near as I can come at it.
Q. Three or four years ago?
A. Longer than that.
Q. You can remember how much longer?
A. Seven or eight years, if I am not mistaken.
Q. How long before your second work that you were talking about, under Edmund Burke?
A. My second work was about four or five years before I went to work with him.
Q. What size trees were you cutting down?
A. I was cutting,—the largest tree was from three feet to two and four feet through.
Q. Four feet through?
A. Yes, sir; some logs measured four feet.
Q. What was the smallest tree you cut down?
A. A foot and a half or a foot.
Q. A foot and a half or a foot?

A. Yes, sir.

Q. When you got to building these bundles of brush, did you work honestly at the work?

1030 A. Yes, sir; done all I could.

Q. They told you they wanted them twelve inches, did you choke them up tight?

A. Yes, sir.

Q. As tight as you could?

A. Yes, sir; tight as I could.

Q. You did good, honest work, did you?

A. Yes, sir.

Q And after doing that, they would throw them out, and not pay you?

A. Yes, sir.

Q. And those they threw out were just as good as those they took, as far as you could see?

A. As far as I could see; I did just as hard work on them.

Q. And one day the threw out your whole day's work?

A. Yes, sir.

Q. And told you you would have to make them over, but when you got back, they had carried them off?

A. Yes, sir.

Q. But they were done just as well as the others?

A. Yes, sir.

1031 JOHN B. McCARTHY, a witness for the prosecution, previously sworn, recalled, testified as follows:

Direct Examination by the Judge-Advocate.

Q. You have already been sworn as a witness in this case?

A. Yes, sir.

Judge-Advocate: Mr. McCarthy is a witness from the office of the Chief of Engineers in Washington, and, in response to a memorandum submitted by a member of the Court, who desired to have certain papers sent for, he has produced them.

Q. You produced all the papers that were asked for in this memorandum?

A. Not all that were asked for in that memorandum. In connection with the memorandum is the original copy of the

annual report of Capt. Carter for 1897, which is in the office here.

Q. That was called for in this memorandum?

A. Yes, sir. The two previous requests I have got, with a letter explaining them, from the office.

Q. (handing witness paper) That second item, then, the one marked Savannah Harbor, is that the one?

A. I had that with me, and this is the answer to that.

Q. Have you a statement of the papers?

A. Yes, sir. (Hands the Judge-Advocate the papers)

Judge-Advocate: The first paper called for is Capt. Carter's project for improvement of Cumberland Sound, Ga. June 17th, 1895; June 22, 1895, Colonel Hains' indorsement recommending same for approval. The first is the report of the Board of Engineers, dated Savannah, Ga., December 18th, 1895. Does the Court desire it to be read?

The Court: Yes.

Judge-Advocate: (After reading the paper referred to) A copy of this will be attached to the record marked Exhibit No. 98.

The endorsement on the back is a brief of its contents with the notation, "Printed in Annual Report Chief of
1032 Engineers, 1896. Copy to Secretary of War accompanying and Feby 8, 1896 on inclos. 8. April 23, 1896, copy hereof to Senator Frye with letter based on inclosure 9." In red ink there is an entry upon this "2 inclosed tracings."

Witness: They are with the papers in Washington. I made no request for the tracings.

Judge-Advocate: The original tracings were not sent with the papers, but there are blue prints at the headquarters here and I will submit them. When the blue prints are received, they will be attached to Exhibit No. 98 as 98a and 98b.

Q. The next paper called for was—?

A. The next project and prior projects.

Q. These inclosures are copies of the originals and the endorsements.

A. Yes, sir; press copies.

Q. Nothing here that is not there (indicating)?

A. Nothing there that is not there (indicating), except they are press copies of the office letters sent here.

Judge-Advocate: The next paper called for was the project of Capt. Carter of June 22nd, 1896, which is already—

The Court: I think it would be more connected if you can ascertain what action was taken by the War Department upon this report of the Board of Engineers.

Judge-Advocate: His project is short. Do you desire to have it put upon the record again?

The Court: This report must have been approved or disapproved What had he to guide him in submitting the project?

The President: What was the Board's report?

Judge-Advocate: Nothing appears there.

Q. Give me letter from Capt. Carter of date of June 17, 1895.

A. (Witness handed Judge-Advocate the paper called for)

Judge-Advocate: This is the original letter from Capt. Carter to the Chief of Engineers, submitting project for the improvement of Cumberland Sound, Ga., and Florida, 1033 dated Savannah, Ga., June 17, 1895, and typewritten, but the 17 is scratched out and 12th put in pencil. The accused assures me that it is the same project as submitted by the Board of Engineers.

The Court: We want the action on the report you have read. A definite project has been submitted by the Board, consisting of half a dozen officers, to the Chief of Engineers. Now we want to know whether that project was approved, and directed to be carried out, or whether it was disapproved.

Q. (Addressing the witness) Have you any information among those papers?

A. Here is the approval (handing Judge-Advocate the paper).

Q. What is this you hand me?

A. The press copy of an endorsement on the official paper, Office of Chief of Engineers, August 3rd, 1896, signed by Col. McKenzie, Acting Chief of Engineers.

Q. In relation to what?

A. Cumberland Sound.

Mr. Rose: That is the project of expenditure, and not of the work. That is in evidence already,—the original.

Judge-Advocate: In response to the telegram that was sent, there comes from the Office of the Chief of Enginers a communication enclosing certain papers. We will commence with the first paper of June 17, 1895, which has already been submitted. Then the report of the Board submitting project has already been submitted.

The Court: Can you state to the Court what action was taken upon the report of the Board?

Judge-Advocate: These papers will show the manner in

which the recommendations of the Board got into operation.

Copy of the communication to which I referred, the project of Capt Carter of June 17, 1895, which he says, with some slight modifications, is the same as the project of the Board, will be attached to the record marked Exhibit No. 69.

1034 Q. If you will take these papers,—I have taken these two out,—and identify the papers one by one; bring them out and identify them?

A. Feb. 7, 1896.—Hon. W. B. Hooker, Chairman River and Harbor Committee, House of Representatives, requested copy of report of Board; Feb. 8, 1896, Chief of Engineer submits copy to Secretary of War; Feb. 13, 1896, letter of Hon. W. B. Hooker, back with notation, "Copy of report handed to Mr. Hooker Feb'y 12, 1896." Here is the communication (handing out paper) with that notation on it; that covers that case. April 21, 1896,—Copy of Report of Board requested for use of Senate Committee on Commerce. This is the paper (handing paper out) showing that copy was sent to the Senate Committee on Commerce in connection with the River and Harbor Bill. April 23, 1896, Chief of Engineers sent copy of report of Board to Senator Frye, Chairman of Senate Committee on Commerce. I haven't that letter, but I have a press copy of his letter here. Here (handing paper out) is the press copy of the letter sent Senator Frye. June 19, 1896,—Letter to Capt. Carter directing submission of project for expenditure. This is the paper (handing it out). Sundry Civil Act of June 4, 1897, appropriated for Improving Cumberland Sound, Georgia and Florida: For continuing Improvement, three hundred and fifty thousand dollars. June 10, 1897,—Letter to Capt. Carter directing submission of project for expenditure of above. June 15, 1897, Capt. Carter submits project in compliance with above. Here is that paper (handing out paper). "All letters mentioned above are herewith, except Capt. Carter's project of June 22, 1896, which is in Mr. McCarthy's custody." I had it, and that was here a moment ago. These are all the papers I identified, and these are the ones referred to in this letter of transmittal.

Q. These are all the papers from the official files of the Engineer Department?

A. Yes, sir.

1035 Q. Have you made search for any authority for Capt. Carter to modify the terms of the project of the Board?

A. Yes, sir.

Q. Have you found any such authority?
A. Nothing.
Q. Have you found any request for such authority?
A. No, sir.
Q. Had such request and such authority beeen filed,—been in the office, would you have found it?
A. Yes, sir.
Q. There would have been record of it?
A. Yes, sir. The conclusion of the letter says that there was none.
Q. You have made a search for it?
A. I made a search myself.
Q. And had there been such authority, you would have found it?
A. Yes, sir.

Mr. Blair: We would like to have it appear on the record here in connection with that project of the Engineer Board which has been read, that it was never approved by the Chief of Engineers, but was written into the River and Harbor Act of June 3, 1896, and thereby was approved by Congress. It never received the approval of the Chief of Engineers, or anybody connected with the War Department, but is specifically mentioned in the Act of June 3rd, 1896, and approved thereby.

Judge-Advocate: That fact will necessarily appear when we pursue this subject in the morning; however, it is well enough to have it on the record even now that the project was approved by the Act of Congress, which has been read already.

Witness: Maj. Stanton's request also covered another matter, and I would like to get rid of that.

Q. (Judge-Advocate continuing) What is that paper?
1036 A. Paper in connection with building a training wall down at Cockspur Island Oyster Bed. He asked for the original paper, and any endorsement or letters there were, or letters relating thereto.
Q. You identify that as what?
A. As the official record from the office of the Chief Engineer, and answers that question as far as the record there answers it.
Q. That is what?
A. The file number of it is 7913, enclosure 6, dated June 22, 1896. It is the project submitted by Capt. Carter for ex-

penditure of appropriation of June 3, 1896, $5,000 for Improving Harbor at Savannah, Ga.

Q. Is that the only project in relation to Cockspur Island?

A. That I supply in reply to that request. That answered the request that was handed me in Maj. Stanton's handwriting.

The President: The hour of adjournment has arrived, and the Court stands adjourned until tomorrow morning at eleven o'clock.

(Court adjourned at 3.00 o'clock p. m.)

THOMAS F. BARR
Col. & Asst. Judge Adv. Genl.
Judge Advocate.

1037 United States Court Room,
Savannah, Ga.,
February 4, 1898.

The Court met pursuant to adjournment this morning, at 11 o'clock, a. m.

Present.

All the members of the Court and the Judge-Advocate.

The accused, his counsel, and the reporter, G. T. Cann, were also present.

* * * * *

1044 Judge Advocate: Is it the desire of the Court that I shall read all these papers as they are submitted by the Chief of Engineers consecutively? There is here the project for improving Cumberland Sound, antedating the project of the Board, of Capt. Carter, which he says that the Board adopted his report with some slight modification.

The President: If the accused desires the reading of the whole papers,—if you now desire it, you can read the extracts.

Judge-Advocate: I cannot tell where the modifications are, I think if they are spread upon the record, one after the other, it will be just as the history which the Chief of Engineers gives here.

Mr. Blair: The accused says he can point out the modifications.

By a member: If they are not too long I would like to have them read.

Judge-Advocate: I shall offer these in evidence, each of

these papers, so they may be attached as exhibits without putting them upon the record. (Reading.

"United States Engineer Office,
Savannah, Ga., June 17, 1895"

The 17 is erased and 12 in pencil placed over it. (Here the Judge Advocate reads a revision of the project of Improvement of Cumberland Sound, Georgia and Florida, under date of June 17, 1895, by O. M. Carter, Capt. Corps of Engrs. 1045 U. S. A. to Brig. Gen. Wm. P. Craighill, Chief of Engineers, U. S. Army, through Lieut. Col. Peter C. Hains, Corps of Engrs. U. S. Army, Division Engineer, S. E. Division, and also reads the first, second and third indorsements thereon, and states—

Judge-Advocate: A copy of this is already attached to the record, marked Exhibit 99, but was not fully read. The report of the Board of Engineers, referred to, was read first at the request of one of the members of the Court.

Judge-Advocate: The next paper as offered in evidence is as follows:

"Committee on Rivers and Harbors,
House of Representatives, U. S.
Washington, D. C.
Feb'y 7, 1896.

Gen. W. P. Craighill,
Chief of Engineers,
Washington, D. C.

Sir:

I would thank you to forward for the use of the Committee on Rivers and Harbors, a copy of the report made recently by a Board of Engineers, designated to investigate Cumberland Sound (Georgia and Florida)

Very respectfully,

W. B. Hooker,
Chairman."

1st Indorsement.
Office Chief of Engineers, U. S. Army,
February 8th, 1896.

Respectfully submitted to the Secretary of War. The report called for, of which a copy is herewith, was not intended for use outside the office of the Chief of Engineers; but there is no objection to its going to the Committee on Rivers 1046 and Harbors of the House as requested by Hon. Mr. Hooker, Chairman, unless to send it would be a violation of the spirit of Section 13, River and Harbor Act of

1894, as follows:—That no preliminary examination, survey, project, or estimate for new works, other than those designated in this act, shall be made."

W. P. CRAIGHILL,
Brig. Gen., Chief of Engineers."

Judge-Advocate: The paper is indorsed, War Department, Washington, Feb. 7, 1896, Hon. W. B. Hooker, Chairman R. & H. Committee, requests copy of recent report of Board on Cumberland Sound, copy of report handed to Mr. Hooker, Feb. 12, 1896." A copy of this will be attached to the record and marked Exhibit 100. I offer in evidence and read a letter from the Committee, on Commerce, United States Senate, Washington, D. C., April 21, 1896, to Gen. Wm. P. Craighill, Chief of Engineers, U. S. Army, requesting copy of Capt. Carter's report on improvement of Cumberland Sound, Ga., in which estimate of cost was increased, together with a memorandum attached thereto, reciting that Gen. Craighill directed that a copy of report of Dec. 1, 1895, by Board of Engineers, be furnished Senator Frye, and that said copy was sent accordingly, with E. D. letter of April 23, 1896, date of this memorandum is April 25, 1896. Copy of this will be attached to the record and marked Exhibit 101.M. The inclosed letter referred to in that memorandum is, "Office Chief of Engineers, United States Army,

Washington, D. C., April 23, 1896.

Subject,—Cumberland Sound.

Hon. Wm. P. Frye,
Chairman Committee on Commerce,
United States Senate.

Sir:

I am in receipt of letter of 21st, instant, from the 1047 Clerk of your committee, and, to comply with request therein, I enclose a copy of a report of Dec. 18, 1895, by a Board of Engineer Officers, on the subject of the improvement of Cumberland Sound, Georgia and Florida.

Very respectfully,
Your obedient servant.

WM. P. CRAIGHILL,
Brig. Gen. Chief of Engineers."

A copy of this will be attached to the record and marked Exhibit 101. A.

Judge Advocate: The next thing referred to in the communication from the Chief of Engineers, is the River and Harbor Act of June 3, 1896. This is a statute of which the

Court will take judicial notice, but I spread upon the record the appropriation covering that subject; "Improving Cumberland Sound, Georgia, Continuing Improvement, $5,000.00, provided that contracts may be entered into by the Secretary of War for such material and work as may be necessary to complete the present project to be paid for as appropriations may from time to time be made by law, not to exceed in the aggregate two million, three hundred and forty-five thousand dollars, exclusive of amount herein and heretofore appropriated."

JOHN B. McCARTHY, recalled as a witness for the prosecution having been previously duly sworn, testified as follows.

Direct Examination.

Questions by the Judge-Advocate:

Q. You produced these papers yesterday, Mr. McCarthy; that memorandum of June 19, 1896, of a letter to Capt. Carter, asking for the submission of a project for the expenditure of certain amounta appropriated; I see no signa-
1048 ture attached nor address in these papers?

A. This is a form on which the letter is written and it is a regular printed form of the office. (Handing the Judge Advocate a printed form)

Q. This is an office paper?

A. We just make a copy of the address and this printed matter runs in here (indicating) with this interlineation, "And your judgment as to its worthiness".

Q. This is the first impression?

A. Yes, sir.

Q. What is this other impression?

A. There is a signature very faint at the bottom, "A. McKenzie", the "Lieut Col." is rather indistinct. The "A. McKenzie" is very indistinct;; in addition to this memorandum, this regular form of detailed information follows.

Judge Advocate: I don't think it necessary to read the statement in regard to the passage of the act, calling for the amount of the expenditure; it will of course, go in the exhibit.

(Here the Judge-Advocate reads a letter from the Office of the Chief of Engineers, U. S. Army, Washington D. C., dated

June 19, 1896, to Capt. O. M. Carter, Savannah, Ga., upon the printed form above referred to, with this interlineation in ink, "And your judgment as to its worthiness", the impression only taking the ink, and the three letter press copy book pages attached to said letter.

Judge-Advocate: A copy of the communication just read will be attached to the record, marked Exhibit No. 102.

Judge-Advocate: I offer in evidence and read letter of Capt. O. M. Carter to Brig. Gen. Wm. P. Craighill, Chief of Engineers, U. S. Army, dated June 22, 1896,

Subject, project of expenditure Cumberland Sound,
1049 Georgia, together with the indorsements thereon. A copy of this will be attached to the record and marked Exhibit, No. 103.

By a member: The printed circular letter, calling for that project, called for a resume of the project then in force. This project for expenditure states that that project was a project for the Board of Engineers.

Judge Advocate: Yes.

By a member: I would like a description of the ultimate jetty section read from the report of Engineers, near the close of the report, just about the end.

Judge Advocate: (Reading— The following type of jetty is proposed. The foundation and apron courses should be of brush mattresses, 100 feet in width and loaded with rip rap stone; the ultimate jetty section should be composed of foundation of brush mattresses with a load consisting of a hearting of small stones, covered with heavier stone, in going seaward the covering stone should increase the weight from 1,000 pounds to five tons, as the low water depth increases from zero to twelve feet. Beyond that depth still heavier stone should be used. The side slopes should be as deep as such stone can stand. An ultimate crest width of ten feet at mean high water is sufficient."

By a member: Now I would like a description of the ultimate jetty section read as quoted from the report of the Board of Engineers. Now, this report, as I understand, is to give a resume of this project of improvement by the Board of Engineers.

Judge Advocate: (Reading) "The project contemplates the formation of a channel across the bar, not less than 19 feet deep at mean low water. This is to be accomplished by the construction of two jetties of stone, with a mattress heart-

ing wherever admissible, resting upon a foundation mat-
1050 tress of brush starting from the shores on opposite sides of the entrance, and extending seaward upon converging lines, so directed that the ends will be aprallel to each other and about 3,900 feet apart."

By a member: Now, I would like from the records of the office, the authority for stating that that project called for mattress heartings wherever admissible, after stating, that is the approved project of that date.

The President: There are two projects submitted, one by Capt. Carter, on June 12, 1895, another by the Board of Engineers, dated, I think, June 18, 1895.

Judge-Advocate: The report of the Board was December 18, 1895.

The President: December 1895, yes; that is the later one. The report of the Board of Engineers, is subsequent to the project submitted by Capt. Carter.

Judge-Advocate: His first project.

By a member: His first project which the Board of Engineers amends in certain particulars; now we wish to know which of those projects was approved by Act of Congress.

Judge-Advocate: That is a question, I presume, to be determined by the practice of the Department.

The President: No, I think you have it in your papers there, the Act itself.

Judge-Advocate: The Act itself does not refer to anything but the Cumberland Sound appropriation, does not refer to anything, to any reports specifically.

By a member: Which of those projects was sent to the Committee of Congress.

Judge-Advocate: This portion from the report of the Board of Engineers.

The Court: Both to the House and Senate Committee.

Judge Advocate: Both to the House and Senate Committee.

1051 By a member: That was the report as appears from these papers

The President: That is the only project that Congress acted upon?

Judge-Advocate: The only project, so far as these papers have yet shown that was submitted to the Committeee of Commerce in the Senate, and of Rivers and Harbors in the House, for the appropriation of Cumberland Sound. There is no specific mention made of any project by name.

Mr. Rose: It says, the "present project".

Judge Advocate: By any officer or member, but in the report of Capt. Carter, is mentioned an appropriation for improving Savannah Harbor.

By a member: I would like very much to see the authority for stating in the project for the expenditure that the project then in force, that is the project of the Board of Engineers, authorized a mattress hearting.

By a member: I think that is right in that paper.

Judge-Advocate: I have asked this witness already if there is any authority found in the records of the Department for any modification of the report of the Board of Engineers, and he has stated that he is unable to find it.

By a member: It is right there in those papers.

Mr. Blair: The authority for that is in the indorsement, I presume, it is approved by the Secretary of War.

The President: That is the report after the appropriation is made.

Mr. Blair: That is the report speaking of mattress hearting to which Major Stanton refers.

By a member: What I refer to specially is the statement that the approved project was to build a jetty of mattress hearting; I would like to know the authority for that statement.

Judge Advocate: There is a statement in this letter 1052 from the office of the Chief of Engineers which, if the counsel will permit to be read to the Court, shows a view that obtains in the office of the Chief of Engineers upon this very point.

Mr. Blair: Of course, that is Gen. Wilson's statement of what Gen. Craighill intended, I think this will make it plain perhals, to the members of the Court: (Here Mr. Blair shows a blue print map to the Court)

The President: We will just drop this matter at the present time.

Judge-Advocate: Have you any objection to that? (Referring to the letter)

Mr. Blair: I don't think we ought to be bound by that statement now of Gen. Wilson, Gen. Craighill will be here on the stand, and he can explain it.

Judge-Advocate: Have you any objection to having that go on?—as the concluding part of this letter when I reach it, and as the views that obtain in the Engineer Office now? They

are certainly still engaged in the execution of that project in the Engineer Office.

Mr. Blair: I think Gen. Craighillne—could state whether there has been any modification himself; he ought to be here; he is the man who approved the project.

Judge-Advocate: A copy of that will be attached to the record and marked Exhibit No. 103. (Referring to letter from Capt. Carter to the Chief of Engineers, dated June 22, 1896, submitting project for expenditure of appropriation of June 3, 1896, $5,000.00, for improving Cumberland Sound, Ga.)

Judge-Advocate: I offer in evidence and read

Subject, Sundry Civil Act.

Office of the Chief of Engineers,
United States Army,
Washington, D. C. June 10, 1897

"Capt. O. M. Carter,
1053 Corps of Engineers,
Savannah, Ga.

Captain:

There is inclosed herewith a copy of the Sundry Civil Act, approved June 4, 1897. This Act contains items, (on page 38) for Works of Improvement within your district as follows: Improving Harbor at Savannah, Ga: for continuing improvement, $350,000.00; Improving Cumberland Sound, Georgia and Florida, for continuing improvement, $350,000.00.

Please submit at an early a day as practicable projects for the expenditure of the amount appropriated, specifying to what portion of the works you propose to apply the funds reference being had to the approved plans and to the estimates upon which the present appropriations are based.

By command of Brig. Gen. Wilson.

Very respectfully,
Your obedient servant,
A. MacKenzie,
Lieut. Col. Corps of Engineers,

(One inclosure)"

Judge-Advocate: To which this response was made. (Reading) Letter of June 15, 1897, from Capt. O. M. Carter to Brig. Gen. John M. Wilson, submitting projects for expenditure of $350,000.00, Act, June 4, 1897, for improving Cumberland Sound Ga., Continuing improvement.) (All the indorsements thereon being also read.)

Judge-Advocate: A copy of this will be attached to the record marked Exhibit, No. 104.

Judge-Advocate: The balance of the communications from the office of the Chief of Engineers, is the statement of the view of the office upon the appropriation.

Mr. Blair: There seems to be some misapprehension
1054 in the minds of some of the members of the Court, with respect to this letter of June 22, 1896, by Capt. Carter, to Gen. Craighill, with respect to a project for the expenditure of $5,000.00, then appropriated for for the Cumberland Sound Improvement. The second page of the letter contains this statement: "This is to be accomplished by the construction of two jetties of stone, with a mattress hearting wherever admissible." The project, as the Court will see, of the Board of Officers was, that there should be a foundation course of mattresses, and stone laid upon them; a foundation course or courses of mattresses. An examination of the tracings or blue prints, which accompanied that report, and a measurement of the outlines of the jetties therein shown, will demonstrate when the number of square yards of mattresses recommended by the report of the Board of Officers, is taken into consideration, that the foundation course of mattresses necessarily must have consisted of six or more mattresses. Now, the accused says, and this will be sworn to later, that the phrase or clause that a mattress of hearting wherever admissible, is a stereotyped phrase appearing in numerous old reports, from 1881 down; that it crept into this letter and the other that the Judge Advocate read, by inadvertence; that the project has been carried out as will be shown in the evidence, precisely as recommended by the Board of Officers: There has been in fact, no hearting of mattress; none was ever intended, none was ever in the mind of the accused, and to show that the phrase which has, as I say, crept in by inadvertence, was purely an inadvertence, the final paragraph in the letter, I think, demonstrates: "Any work executed should consist in extending and raising both jetties, as provided in the project approved by the Act, and in the report of December 18, 1895," which is the report of the Board of Officers.

1055 By a member: Will you look at the indorsement of the Chief of Engineers and see what it says with reference to that matter, or it may be in Col. Hains' indorsement: It says the basis of the project is the report of the Board of Engineers.

Mr. Blair: Yes, sir; this is the indorsement of the Chief

of Engineers: (Reading) "The project upon which this appropriation is based was formulated and recommended by a Board of Engineers." That is the one you refer to?

By a member: Yes, sir.

Mr. Blair: The last paragraph, as I stated, in the letter of Capt. Carter, states that any improvement should consist in extending and raising both jetties, as provided in the project approved by the Act and in the report of Dec. 18, 1895; so I make that statement to remove as far as possible, any misunderstanding about it, and by the courtesy of the Judge Advocate.

Judge-Advocate: There were two responses to the letter of the 19th, of June, 1896, from the Chief of Engineers, and one was inadvertently based upon the project for the expenditure for Savannah Harbor. (Here the letter of June 22, 1896, from Capt. O. M. Carter, to Brig. Gen. Wm. P. Craighill, submitting project for expenditure of appropriation of June 3, 1896, $5,000.00 for Harbor of Savannah, Ga., together with the indorsements thereon, is read by the Judge Advocate, in evidence)

Judge-Advocate: This is offered in evidence and a copy will be attached to the record and marked, Exhibit No. 105.

1056 JOHN W. O. STERLY, recalled as a witness for the prosecution, having been previously duly sworn, testified as follows:

Direct Examination.

Questions by the Judge Advocate:

Q. Give me G. R., page 31, 1889?

(Here witness produces the book and page asked for)

Judge-Advocate: I offer in evidence and read 3rd Indorsement.

U. S. Engineer Office,
Savannah, Ga., April 27, 1889.

Respectfully returned to
Chief of Engineers, U. S. A.,
Washington, D. C.

Mr. M. J. Wheeler is from Fayetteville, N. Y., and was in business there with his brother some years ago, so I am informed. They failed and he states that it will be impossible

for him to do any work without being embarrassed by his creditors. I do not think that Mr. Wheeler has much property of his own. He probably relied upon his bondsmen to supply the money necessary for carrying on the work.

O. M. CARTER,
1st Lieut. Corps of Engineers, U. S. A."

Q. Where are the original papers?

A. The original papers are in Washington, in the office of the Chief of Engineers.

Q. Retain copies of papers sent there for final file are made out in your office, are they?

A. Yes, sir.

Q. Are these copies of those original papers? (Hand-
1057 ing witness papers)

A. Yes, sir.

Judge-Advocate: All these are offered in evidence. (Reading)

"Pulaski House,
Watson & Powers.

Savannah, Ga., April 16, 1889.

Lieut. Col. J. A. Smith,
Corps of Engineers, U. S. Army,
Portland, Maine.

Colonel:

Mr. M. J. Wheeler, whose bondsmen I am upon a bid for work in the Kennebec river, informs me that he wishes to be excused from entering into contract under that bid, because of some old business complications that were revived when it was known that he was a successful bidder for some work. At his request I beg leave to ask that the contract be given to me in my name, as his principal bondsman.

I think I am entitled to this, as his failure is due to circumstances unforeseen and unknown to me when I went on his bond.

Yours resp'y.,
B. D. GREENE."

First indorsement.

U. S. Engineer Office,
Portland, Me., Aug. 20, '89.

"Respectfully forwarded to the Chief of Engineers, with the recommendation that the contract be authorized with the principal bondsman of the bidder. Mr. M. J. Wheeler is now so situated that he cannot carry on the contract without great

embarrassment to himself, and consequent inconvenience to the Government. The work will therefore be facilitated
1058 by making the contract as required by Capt. Greene.

JARED A. SMITH,
Lieut. Col. Corps of Engineers, U. S. A.

Second Indorsement.

Office Chief of Engineers, U. S. Army,
April 25, 1889.

Respectfully referred to Lieut. O. M. Carter, Corps of Engineers, with the request that he make inquiry relative to the responsibility and business connections of Mr. M. J. Wheeler.

By command of Brig. Gen. Casey:

THOS. TUTTLE,
Captain Corps of Engineers."

Judge Advocate: These precede the indorsement which I first read from the official letter book. It is briefed as follows:

"Savannah, Ga., April 16, 1889.

1st, 2d, and 3d, indorsements, Greene, B. D.

M. J. Wheeler, bidder, for work in Kennebec river, Me., in whose favor the award has been made, asks to be relieved from entering into contract, former business complications coming up to embarrass him, and requests that contract may be made in his (Greene's) name as principal bondsman on the bid."

Judge-Advocate: File mark "G. R., 26, 1889. U. S. Engineer office, Savannah, Ga., Received Apr. 27, 1889."

Q. What is that paper? (Handing witness a paper)

A. That is a proposal of William H. Walsh for improving Cumberland Sound, Ga., opened Sept. 10, 1892.

Q. That is from one of the original copies in your office?

A. Yes, sir.

Judge-Advocate: That I find is already in evidence as
1059 Exhibit No. 27. I call attention to Exhibit 27, which was the proposal of William H. Walsh to be opened Sept. 10, 1892, that the guarantee is signed by William F. McCaully, of Savannah in the State of Georgia and Myron J. Wheeler, of Savannah in the State of Georgia, dated Sept. 9, 1892, and in the justification of the guarantors, William F. McCaully signed this oath: "I, William F. McCaully, one of the guarantors named in the within guarantee, do swear that I am pecuniarily worth the sum of $75,000.00, over and above all my debts and liabilities.

WILLIAM F. MCCAULLY,

Before Michael A. Connolly, United States Commissioner,"

and "State of Georgia, County of Chatham, I, Myron J. Wheeler, one of the guarantors named in the within guarantee, do swear that I am pecuniarily worth the sum of $75,000.00 over and above all my debts and liabilities.

Signed, MYRON J. WHEELER,

Before me, Michael A. Connolly, United States Commissioner. Certificate, I, Michael A. Connolly, United States Commissioner, do hereby certify that William F. McCaully and Myron J. Wheeler, the guarantors above named, are personally known to me, and that, to the best of my knowledge and belief, each is pecuniarily worth, over and above all his debts and liabilities the sum stated in the accompanying affidavit, subscribed by him.

Signed, Michael A. Connolly, United States Commissioner."

This is already in evidence.

Q. Do you know who M. J. Wheeler is?

A. Mr. Wheeler is a foreman—he was a foreman of the Atlantic Contracting Company.

Q. Foreman of what kind of labor?

A. I have never seen him on the work, he has come to the office.

Q. His name does not appear upon any reports at the office?

1060 A. No, sir, but he has come for instructions to the office.

Q. Instructions of what kind?

A. I don't remember exactly what it was; I overheard just a small part of the conversation.

Q. You don't know then?

A. I don't know.

Q. Then it is only by reputation that you know the character of his employment at all?

A. I cannot say that exactly; Capt. Carter addressed a communication to Mr. Wheeler. I do know. Capt. Carter addressed a communication to him, when he was working on the Savannah river.

Q. How did he address it?

A. "Memorandum for Mr. Wheeler."

Q. Memorandum in relation to what kind of work?

A. How much fascines would be needed; I don't know exactly whether it is fascines; I know there was a memorandum in relation to work on the Savannah river, which is copied in the copy book; I saw it the other day, but I cannot remember the substance of it now.

Q. Well, that is enough, I think. You have the papers in relation to the Brunswick Harbor contract, May 31, 1889, with you?

A. Yes, sir.

Q. And of the Altamaha river, Dec. 20, 1892?

A. No, sir, I have no papers here for that.

Q. Well, never mind that then; give me the papers in relation to Brunswick harbor.

Judge-Advocate: I will not consume the time of the Court by reading all of this. This was a contract of May 31, 1889; the contract of Charles C. Ely; the date of the advertisement was April 24, 1889; the date of opening the bid was May 13, 1889; the letter requesting authority to print and advertise was April 24, 1889. It was approved April 27, 1889, and 1061 received in Savannah April 29, 1889; fourteen days before the opening of the bids; 150 specifications were printed, and there is no record of application and issuing of specifications. The bid of Charles C. Ely was recommended. I will not consume the time of the Court, reading this.

Mr. Blair: Was he the lowest bidder, Colonel?

Judge Advocate: The abstract of proposal shows that there were two bidders, David V. Howell, who bid for fascines per cubic yard, 67 cents; for stone, $3.47, a total of $11,020.00; Charles C. Ely, of Savannah, Ga., bid for fascines, per cubic yard, $1.34, and for stone, $3.41, amounting to $13,215.00; an asterisk against the name of Mr. Howell, says "Informal", and against the name of Mr. Ely is a cross, which is "Bid recommended for acceptance". I shall have to look at the letter. The asterisk and then one word in here, "Informal", that is against the name of Mr. Howell, whose bid was $11,020.00. The letter of transmittal referred to is this,

"United States Engineer Office,
Savannah, Ga., May 13, 1889.

The Chief of Engineers, U. S. Army,
Washington, D. C.

General:

I have the honor to transmit herewith all proposals received for stone and brush work in Brunswick Harbor, Ga., with abstract of same, and authority is requested to award the contract to Chas C. Ely, of Savannah, Ga.

"The bid of Mr. Howell is informal, being unaccompanied by a guarantee and being made out only in duplicate, and in view of these facts and of the fact that Mr. Howell failed

while executing work upon Savannah river some years ago, I do not think his bid should be considered.

I estimated the price of fascines at $1.25 per cubic
1062 yard, and of stone at $3.25 per cubic yard. Mr. Ely's bid is somewhat above these figures, but it is important that work should be done and completed at the earliest practicable moment, and I think that under these circumstances, it is more economical and advantageous to the Government to award the contract at his figures than to re-advertise the work.

Very respectfully,
Your obedient servant,
O. M. CARTER,
1st. Lt. Corps of Engrs. U. S. A.

(Three enclosures.)"

Judge Advocate;—And this communication, "U. S. Engineer Office, Savannah, Ga., received May 20, 1889." (Reading)

"National Hotel,
Monroe, N. Y.
Chas. H. Dix, Prop'r.
Monroe, N. Y., May 11, 1889.

Col. O. M. Carter,

Dear Sir:

I received your proposals last evening through John S. Howell, too late for me to make the papers out with proper securities, and for this reason I have concluded to send you the inclosed informal bid. Should I come out the lowest, I will at once give you good security for the amount required on the contract, and do the work as fast as you expect it to be done.

Very truly,
Yours, D. V. HOWELL.
Box 36 Monroe, N. Y."

1063 Judge-Advocate: The proposals of Mr. Howell and of Mr. Ely will be attached to the record and marked Exhibit, No. 106, and Exhibit No. 107.

Judge-Advocate: A copy of the contract with Mr. Ely will be attached to the record and marked Exhibit No. 108.

Judge-Advocate: I offer in evidence also the contractor's bond, with Jacob Paulsen and John F. Gaynor as sureties for the penal sum of $4,000.00; a copy of which will be attached to record and marked Exhibit No. 109.

Q. Give me G. R., 72, 1889.

A. I have not got that paper.
Q. G. R. 72, 1889?
A. That must be among that file there. (Indicating) This file or this file, Colonel (Indicating)
Q. That is it, is it?
A. G. R. 72, 1889, yes, sir.
Q. These are papers of the same nature as those quoted and copied from the originals sent to the Engineer Office?
A. Yes, sir.
Judge Advocate: I offer in evidence and read 'Ross and Sanford, Contractors

Savannah, Ga., Dec. 20, 1889.

Lieut. O. M. Carter,
Corps of Engrs. U. S. A.,
Savannah, Georgia.

Dear Sir:—

On July 3rd, 1889, I received (On a/c of jetty work at Brunswick Ga.) cheque No. 139164, on U. S. Asst. Treasurer, at New York, for $3,929.95. In forwarding the same (through the mail) from here to New York, it was lost, consequently, I have received no benefits from it. I respectfully ask that I be reimbursed for same by duplicate check or 1064 otherwise, and oblige,

Very truly yours,
CHAS. C. ELY."

First indorsement, U. S. Engineer Office, Savannah, Ga., December 20, 1889.

Respectfully forwarded to the Treasurer of the United States, Washington, D. C.

I am unauthorized to issue duplicate cheques for sums exceeding in amount $2,500, and respectfully request that such steps as may be necessary to secure a compliance with Mr. Ely's request, contained in within letter, may be taken.

O. M. CARTER,
1st. Lt. Corps of Engrs. U. S. A.

G. R. 72, '89."

Judge Advocate: I find here the original letter of Mr. Ely, and these are the indorsements after the indorsement of Capt. Cartee, which has been read. The indorsement of the 'Treasury of the United States.

December 26, 1889.

Respectfully referred to the Secretary of the Treasury. Writer so advised J. N. Huston.

Treasurer U. S.

Treasury Department,

December 28, 1889.

Respectfully returned to O. M. Carter, Lieut. U. S. Engineer Corps, Savannah, Ga., with the information that, unless he chooses to issue a second original check, for the amount in question, at his own risk and upon his own authority, it will be necessary for the party in interest to apply to Congress for relies, or await the expiration of three fiscal years 1065 from the date of lost check, when, if the check is still outstanding and unpaid, its amount will be covered into the Treasury to the credit of the appropriation, 'Outstanding liabilities', and to the personal credit of the payee, under the provisions of Section 306, revised statutes of the United States, and be then subject to claim under the procisions of Section 308, Revised Statutes, copy herewith.

It is the practice of United States disbursing officers to issue two checks in payment of one voucher of this amount, in order to bring the amounts of checks within the limit prescribed by law for the issue of duplicates.

GEORGE S. BATCHELLER,
Assistant Secretary.

Mr. Blair: You say you have the original letter of Mr. Ely?

Judge Advocate: Yes, sir.

Mr. Blair: Did you read the letter head, Ross & Sanford?

Judge Advocate: I did read the letterhead. That contains a printed circular from the Treasurt Department, containing the same information that that indorsement conveys. (Meaning G. R., 72, 1889)

Q. Is G. R. 46, also here?

A. Yes, sir.

Judge Advocate: This is an Act of Congress, directing the issue of a duplicate of a lost check, drawn by O. M. Carter, Lieutenant United States Engineer Corps, in favor of Charles C. Ely, (Reading)

"Whereas, it appears that O. M. Carter, Lieutenant Engineer Corps, United States Army, did, on the third day of July, eithteen hundred and eighty nine, issue a check Numbered one hundred and thirty nine thousand, one hundred and

sixty four, upon the Assistant Treasurer of the United States,
at New York, in favor of Charles C. Ely, for the sum of
1066 three thousand, nine hundred and twenty nine dollars
and ninety five cents, in payment of contract work done at Brunswick Georgia, which check is alleged to have been lost in transmission through the United States mails, by Benjamin D. Green, of Philadelphia, Pennsylvania, to whom it had been assigned; and;

Whereas, The Provisions of the Act of February sixteenth, eighteen hundred and eighty five, amending Section thirty six hundred and forty six, Revised Statutes of the United States, authorizing United States disbursing officers and agents to issue duplicates of lost checks, apply only to checks drawn for two thousand five hundred dollars or less; therefor,

Be it Enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That said Lieutenant O. M. Carter be, and he is hereby, instructed to issue a duplicate of said original check, under such regulations in regard to its issue and payment as have been prescribed by the Secretary of the Treasury for the issue of duplicate checks, under the provisions of Section thirty six hundred and forty six, Revised Statutes of the United States.

Approved June 13, 1890

Judge Advocate: Indorsed:

State Department. Furnishes duplicate of a certified copy of Public Act No. 155, approved June 13, 1890, directing the issue of a duplicate of a lost check, drawn by Lieut. O. M. Carter, for $3,929.95, in favor of Chas. C. Ely, in payment for work done at Brunswick, Ga.

First Indorsement.

June 24, 1890.

Respectfully forwarded to Lieut O. M. Carter, Corps of Engineers, for his information. To be returned, By command of Brig. Gen. Casey,

THOS. TURTLE,
Captain Corps of Engrs."

1067 Second Indorsement.
United States Engineer Office,
Savannah, Ga. June 28, 1890.
Respectfully returned to
The Chief of Engineers, U. S. A.
Washington, D. C.
Record made
1st, Lieut. Corps of Engrs U. S. A.

Judge-Advocate: I offer in evidence (Reading)
"Treasury Department,
Office of the Secretary,
Washington, D. C., July 14, 1890.
O. M. Carter,
1st Lieut. U. S. Engineers,
Savannah, Ga.
Sir:
I have the honor to inform you that the duplicate of check No. 139164, drawn by you July 3, 1889, upon the Assistant Treasurer of the United States at New York, in favor of Chas. C. Ely, for $3,929.95, has been approved payable to Benjamin D. Green, and in compliance with a request contained in a letter addressed to this Department by Mr. Green, on the 9th instant, the check has been this day been sent to the Assistant Treasurer at New York, to be held by him until Mr. Green's return from Europe.
Respectfully yours,
GEO. S. BATCHELLER,
Assistant Secretary.

Q. What are these, Mr. Sterly?

A. These are proposals of the Atlantic Contracting
1068 Company for improving the Altamaha River, opened in Savannah the 19th of November, 1892; the proposals from the Atlantic Contracting Company for improving Brunswick Harbor, Ga., opened March 4, 1893, and the proposal of the Atlantic Contracting Company for improving Darien Harbor, Ga., opened Nov. 29, 1892.

Q. Will you look at each one of those proposals and tell the Court in whose handwriting they are filled out?

A. The proposal for the improvement of Darien Harbor has been filled out by two different persons.

Q. Describe the extent to which the writing of two different persons appears.

A. The prices appear to be the same; the prices appear to have been filled out by John F. Gaynor, and the balance of the proposal by Mr. Connolly.

Q. That is in which contract?

A. In the contract for Darien Harbor.

Q. Now, take the next contract, how about that?

A. That is a proposal for improving Brunswick Harbor; the prices are filled out by John F. Gaynor; the other writing I don't know.

Q. How about the next one?

A. That is a proposal for improving Altamaha river; partly filled out by John F. Gaynor, the prices are filled out by him, but I don't know the other writing.

Q. Take that first one that you testified was written by Mr. Connolly and Mr. Gaynor, and read to the Court Paragraph 14.

A. Paragraph 14,—"Proposals must be prepared without assistance from any person employed in or belonging to the military service of the United States, or employed under this office."

Judge-Advocate: I don't think it is necessary to attach this to the record; I simply want that fact drawn out.

Q. Mr. Connolly was employed in the office of the date 1069 of these contracts, was he not?

A. Yes, sir.

Q. Mr. Sterly, you have been preparing a compilation containing a detailed statement of the work done in this engineering district, under certain contracts, will you please bring it out? (I will furnish counsel for the defense with a blue print of this, have already). What is that?

A. This is a statement which I made up from the official record giving the name of the bidders, the work, the date of opening the bids, the quantities to canvas bids, prices of bidders, the total amount of bid, proposals, guarantors and amount, date, bond, date of the contract, the sureties and amounts and names of the contract, the quantities used, the amount earned, and superintendents, in each contract prepared under Capt. Carter. This is for only such contracts as relate to stone and brush or fascines and mattress work, not for dredging.

Q. These are for the contracts made by contractors when Capt. Carter was in charge, only?

A. Yes, sir.

Q. You said they are made up from the official records of your department, how about the superintendence, was in behalf of contractors,—was that made up from your records?

A. No, sir, it was not, I got the information from Mr. Cooper.

Q. Then with the exception of the entries in that column, everything there is from the official records of the department?

A. Yes, sir.

Q. Do the records of the office show every superintendent on behalf of the Government on the work?

A. Yes, sir.

Q. Every one that is there named?

A. Yes, sir.

Q. What is the meaning under that column of 'quantities used to canvas bids'?

1070 Q. By that is meant the quantities which the contractor is expected that will be used in the work, and it is also used for computing the bids to see which bid is the lowest.

Q. It is the basis on which contracts are awarded?

A. Yes, sir.

Q. Prices are given on each material bid for, and then canvassed on the basis that that is the amount that will be required in the work?

A. Yes, sir.

The President: Taken from the specifications?

A. Yes, sir.

Q. Are all bidders shown these who bid on the work?

A. Only those bidders who bid on the mattresses and on stone work and brush work.

Q. What are these red figures in this left hand column?

A. The red figures relate to the contracts arranged as to dates.

Q. That is at that point arranged by dates, numbering consecutively down that column?

A. Yes, sir.

Q. Take that contract No. 1 for 1889 for Savannah Harbor, now how many square yards of mattresses were used to canvas bids?

A. 1,000,000 square yards.

Q. How many were actually used?

A. One hundred and six thousand, nine hundred and twenty eight and decimal seven.

Q. What per cent is that an increase?
A. About 7 per cent.
Q. You have made a calculation on each of these, have you not?
A. Yes, sir.
Q. How many cubic yards of fascine were used to canvas bids?
A. None.
Q. How many were used?
1071 A. There were used 3,291.13.
Q. I am referring to No. 1, Mr. Sterly.
A. Yes, sir.
Q. 3,291.01?
A. 3,291.13.
Q. Was there a supplemental contract?
A. Yes, sir, there was a supplemental contract.
Q. How many cubic yards were used to canvas the bid of rock?
A. 25,000 cubic yards of rip rap rock.
Q. How many were actually used?
Q. 11,682.84.
Q. What per cent is that a decrease?
A. 53 per cent.
Q. Who was the contractor?
A. The contractor was W. T. Gaynor.
Q. Now take contract No. 3, what is its date?
A. May 31, 1889.
Q. Who was the contractor?
A. Charles C. Ely.
Q. What was the work to be done?
A. Jetty work in Brunswick harbor?
Q. What amount of brush fascine was used to canvas bids?
A. 3,500 cubic yards of fascine.
Q. What was actually used?
A. 6033.24.
Q. What per cent increase is that?
A. Seventy per cent.
Q. How much rock to canvas bids?
A. 2,500 cubic yards.
Q. How much do you find used?
A. 988.78.
Q. A decrease of what per cent?
A. Of sixty per cent.
1072 Q. Take contract No. 4, what is that?
A. That is a contract in Savannah river.

Q. Under what date?
A. Under date of 13th, Sept., 1889.
Q. How many cubic yards of fascine to canvas bids?
A. 2,000.
Q. How many actually used?
A. 4572.93.
Q. What per cent is that of increase?
A. 128.
Q. How much rock to canvas?
A. One thousand cubic yards.
Q. And the amount used?
A. 1,158.57.
Q. Never mind the decimals, an increase of what per cent?
A. 16 per cent.
Q. Who was the contractor?
A. William T. Gaynor.
Q. Now, take No. 5, what is that?
A. Contract No. 5 is a contract with John F. Gaynor for work in Savannah harbor, dated Nov. 5, 1890.
Q. What quantity of mattress to canvas the bid?
A. 50,000 square yards.
Q. And the amount used?
A. 72,178.
Q. An increase of what per cent?
A. Of 44 per cent.
Q. What quantity of fascines to canvas?
A. 40,000.
Q. 40,000 what?
A. Cubic yards.
Q. And the amount used?
A. 54,894.
1073 Q. An increase of what per cent?
A. An increase of 37 per cent.
Q. How much rock was used to canvas bids?
A. 38,000 cubic yards rip rap stone.
Q. And the amount used?
A. 29,583.
Q. A decrease in the amount of rock of what?
A. Of 23 per cent.
Q. Now, this contract, No. 6, whose contract was that?
A. That was the contract of John F. Gaynor, for work at Brunswick Harbor and Jekyl Creek.
Q. What date?
A. Under date of March 2, 1891.

Q. How many square yards of mattress to canvas?
A. 2,500.
Q. And used?
A. 2,282.
Q. A decrease of what?
A. Of ten per cent.
Q. And in the fascines to canvas, what amount?
A. 6,000 cubic yards.
Q. And the amount used?
A. 8,004 cubic yards.
Q. An increase of what per cent?
A. Of 33 per cent.
Q. What amount of rock was used to canvas bids?
A. 3,000 cubic yards of rock.
Q. How much was used?
A. 2,074 cubic yards.
Q. Being a decrease of what per cent?
A. Of 32 per cent.

1074 Q. Now, take contract No. 7, who was the contractor?
A. John F. Gaynor.
Q. What was its date?
A. May 4, 1891, for work at Cumberland Sound.
Q. What amount of brush mattresses were used to canvas the bid?
A. 50,000 square yards.
Q. What amount was used?
A. 61,528.
Q. An increase of what per cent?
A. Of 22 per cent.
Q. How much rock was used to canvas?
A. 17,000 cubic yards.
Q. How much actually used?
A. 11,812.31.
Q. A decrease of what per cent,—have you not got that figured out there?
A. No, sir.
Q. Never mind, we wont stop for the figuring, take contract No. 9, whose contract is that?
A. That is a contract of John F. Gaynor.
Q. What date and what for?
A. Date of Sept. 9, 1891, for work at Savannah river.
Q. Take No. 17, what is that?
A. That is a contract with Albert J. Twiggs, for Savan-

nah river, under date of July 5, 1893, and a supplemental contract of Nov. 6, 1893.

Q. How does the amount of fascines and rock used to canvas bids in those contracts compare?

A. In both contracts they canvas bids for 7,500 cubic yards of fascines.

Q. How much rock?

1075 A. And for 4,000 cubic yards of rock.

Q. The same used as to both contracts in canvassing the bids?

A. Yes, sir.

Q. Look at Mr. Gaynor's contract, and see how many fascines were actually used?

A. 4,861.

Q. A decrease of what?

A. Of 36 per cent.

Q. Now look at Mr. Twiggs' contract and see how many fascines were actually used?

A. 7,232.

Q. Well, what is the percentage there?

A. That is a decrease of 3 per cent.

Q. How much rock did Mr. Gaynor use?

A. Mr. Gaynor used 3,352 cubic yards.

Q. How much was that a decrease?

A. 16 per cent.

Q. How much did Mr. Twiggs use?

A. Mr. Twiggs used 6,742 cubic yards.

Q. What increase per cent was that?

A. 68 per cent.

Q. Now, you have got a pencil there, work that out another way; how many yards of rock did Mr. Gaynor use to 1,000 yards of fascine?

A. He used 3,352 cubic yards of rock to 4,861 cubic yards of fascines.

Q. How many yards of rock would that make to one thousand yards of fascines.

A. 689 cubic yards.

Q. Do the same figuring in regard to the Twiggs' contract.

A. 932 cubic yards.

Q. What per cent would that be more than used in

1076 proportion to the fascines to that used by Mr. Gaynor?

A. 45 per cent.

Q. Now, take contract No. 10, whose contract is that.

A. Edward H. Gaynor's.
Q. What was the work and the date?
A. Sept. 16, 1892, for Cumberland Sound.
Q. How much brush was used to canvas the bid under that contract?
A. 80,000 square yards.
Q. How much was used of the brush?
A. 107,735.
Q. What per cent is that an increase? Well, state it roughly, it is about 33 per cent.
A. 34 per cent.
Q. Well, how much was used to canvas the rock bid?
A. 28,000 cubic yards.
Q. How much was used?
A. 13,684.
Q. A decrease of what per cent?
A. Of 51 per cent.
Q. Now, take contract No. 11, what is that contract generally called?
A. That is the big contract, the contract the Atlantic Contracting Company people call the "Big Contract."
Q. What is the date?
A. Oct. 22, 1892, for Savannah Harbor.
Q. That was the first continuous contract let, was it not Mr. Sterly, or do you know?
A. That was the first continuous contract.
Q. Now, what quantity of mattress was used to canvas bids in that big contract?
A. 350,000 square yards of mattresses.
1077 Q. And how much was used?
A. 1,363,572 square yards of mattresses.
Q. An increase of what per cent, an increase of how many square yards?
A. Of 1,013,572.
Q. An increase of what per cent?
A. 289 per cent.
Q. That is nearly four times as much as was used to canvas bids?
A. Yes, sir.
Q. That is three times increase?
A. Three, yes, sir.
Q. Well, 288, that is nearly four times as much mattresses were used really as was canvassed?
A. Yes, sir.

Q. Now, what was the basis of canvassing bids for fascines in that big contract?
A. 300,000 cubic yards of fascines were canvassed for.
Q. And used?
A. There were used 208,124.
Q. A decrease of what per cent,—well, how many cubic yards was the decrease, never mind the per cent?
A. 91,876 cubic yards.
Q. Fascines were paid for by the cubic yard?
A. Fascines were paid for by the cubic yard, yes, sir.
Q. Mattresses were paid for by the square yards?
A. By square yards.
Q. What were the different rates, how much for a cubic yard of fascines?
A. Cubic yard of fascines, $1.60.
Q. And a square yard for mattresses?
A. 95 cents.
Q. How much large rock to canvas in the big contract?
1078 A. 50,000 tons.
Q. How much used?
A. There was none used.
Q. How much small rock or rip-rap to canvas?
A. 200,000 cubic yards.
Q. And how much was used?
A. 127,764 cubic yards.
Q. What was the price of the large rock?
A. The price of the large rock was $2.60 per ton.
Q. What was the price of the small rock.
A. The price of the small rock was $2.95 per cubic yard.
Q. What per cent was the decrease in small rock?
A. 37 per cent.
Q. Besides leaving out the large rock entirely?
A. Yes, sir.
Q. Now take contract No. 14?
A. The Atlantic Contracting Company, o892 Dec. 20, 1892, for Darien Harbor.
Q. Who was the contractor, The Atlantic Contracting Company?
A. The Atlantic Contracting Company.
Q. How many fascines to canvas?
A. 10,000 cubic yards.
Q. And how many used?
A. 15,068.

Q. An increase of what per cent,—well, never mind that, it is apparent that it is about 50 per cent; how much rock was used to canvas?

A. 1,000 cubic yards.

Q. And how much was used?

A. None.

Q. Now, take No. 15?

A. The contractor was the Atlantic Contracting Company.

1079 Q. What date?

A. March 1, 1893, for Jekyl Creek, Water Way, betwen Savannah and Fernandina.

Q. What amount of mattresses to canvas bids?

A. 9,000 square yards of mattresses.

Q. How much mattresses used?

A. 17,171.—square yards of mattresses.

Q. What per cent of that is an increase?

A. 9 per cent, 90 per cent.

Q. How much rock was used to canvas?

A. 3,000 cubic yards.

Q. And what amount was used?

A. 1,253 cubic yards.

Q. If you have not got the percentage already made, never mind that, now take No. 18, what is that?

A. The contract of Ansom M. Bangs, of the date of Nov. 15, 1894 for Cumberland Sound.

Q. What was the basis of bids on mattresses there to canvas?

A. 50,000 square yards.

Q. And what was the amount used?

A. The amount used was 213,334.

Q. That is over 4 times as much as was canvassed?

A. Yes, sir.

Q. How much rock was used to canvas the bid?

A. 30,000 cubic yards.

Q. And how much used?

A. 18,748 cubic yards.

Q. Take contract No. 19?

A. Contract with W. T. Gaynor, of the 20th, of April, 1895, for Altamaha river, Darien Harbor, Jekyl Creek and Water way.

Q. Who was the contractor?

1080 A. William T. Gaynor.

Q. What was the amount of mattresses used to canvas the bids?
A. 7,000 square yards.
Q. And what used?
A. 10,903 square yards..
Q. What was the amount of fascines to canvas?
A. 8,000 cubic yards.
Q. Cubic yards, and how much used?
A. 13,213 cubic yards.
Q. How much rock was used to canvas?
A. 7,000 cubic yards of rock.
Q. What was used?
A. 2,657 cubic yards.
Q. What is contract No. 19?
A. Contract, No. 19.
Q. It was simply the amount of rock used?
A. The rock used, 2,657 cubic yards.
Q. Now take contract, No. 20, what is that?
A. Contract No. 20, is the contract with the Atlantic Contracting Company of October 8, 1896 for Savannah Harbor.
Q. Now, what was the basis of canvassing bids as to mattresses under that contract?
A. 200,000 square yards of mattresses.
Q. When did work begin under that contract?
A. Work began on the 12th, of Jan. 1897.
Q. How much has already been used of mattresses?
A. I gave the wrong date; work began on the 3d, of Dec. 1896.
Q. Now, how much has been used of the mattresses under that contract? You have testified there were 200,000 square yards used to canvas bids; now how much has been used so far as the work has gone?
A. 255,830 square yards of mattresses.
1081 Q. Up to what date?
A. Up to July 31, 1897.
Q. Do you know how many linear feet of breakwater is yet to be constructed?
A. 1,000.
By a member: What work is this for?
Judge Advocate: This is for Savannah Harbor, the present contract for Savannah Harbor.
Q. How wide were the mattresses used in the breakwater?
A. 100 feet wide.
Q. How many feet have already been constructed?

A. About 7,000 feet.
Q. And how many courses high?
A. Three courses high.
Q. Taking 3 courses, 100 feet wide for a distance of 1,000 feet, gives how many square yards?
A. 33,333 square yards.
Q. That is the number of yards it would take to complete the breakwater, as started, is it?
A. Yes, sir.
Q. How much rock has been used to sink those 250,000 square yards of brush mattresses?
A. 21,729 cubic yards up to July 31, 1897.
Q. Now take contract No. 21, what is that?
A. 21 is the contract with the Atlantic Contracting Co. of Oct. 8, 1896, for Cumberland Sound.
Q. That is the present contract?
A. Yes, sir.
Q. Look at Capt. Carter's project of June 12, 1895?
By a member: How much rock was canvassed for getting that last contract, No. 20, rock?
Judge-Advocate: 200,000 square yards of mattresses.
1082 By a member: Of rock—21,729 delivered, how much was canvassed?
A. There was canvassed 25,000 cubic yards of first class stone. 25,000 cubic yards.
Judge Advocate: It is already in evidence that the bids upon first and second class stone, were by the ton of 2,000 pounds; third class stone and fourth class stone per cubic yard.
Q. Now, what was the basis there for rock?
A. First class rock, 25,000 tons; second class rock, 25,000 tons, third class rock, 50,000 cubic yards and fourth class rock, 100,000 cubic yards, and there were used 21,729 cubic yards, of fourth class rock.
Q. And how much, was any used of the first and second class under the existing contract?
A. No, sir.
Q. Now, we will go back to No. 21, that we were considering; I understood you that there was none of the first, second and third classes used?
A. There was for Savannah Harbor only fourth class rock used.
Q. Now, we will go to contract No. 21?
A. The contract with the Atlantic Contracting Company.

Q. You have got that, now I ask you to look at Capt. Carter's project of June 30, 1895.

The President: You made a mistake in giving the amount of stone as 200,000 tons of stone.

Judge-Advocate: He has just read as to the stone.

The President: Yes, but I think he made a mistake there.

Judge Advocate: In what way?

The President: He has called that from the specifications. (You referred to the specifications in making that out? (To Witness—

Witness: Yes, sir.

1083 The President: These are specifications for Cumberland Sound?

Judge Advocate: This is Savannah Harbor.

The President: You were on Savannah Harbor a moment ago.

Judge Advocate: Yes, sir, but we went back to Savannah Harbor by request of Major Stanton; we are now upon Cumberland Sound.

Q. What is the estimate of Capt. Carter's project, June 30, 1895?

A. 425,000 square yards of brush mattresses.

Q. And the amount of rock?

A. 300,000 cubic yards of second class stone.

Q. And how much of the large stone?

A. 125,000 cubic yards of first class stone.

Q. Third class stone?

A. First class stone.

Q. Now refer to the table, how many square yards of mattresses were used to canvas?

A. 200,000 square yards.

Q. How does that compare with Capt. Carter's estimate in his project, just referred to?

A. 225,000 square yards less.

Q. And of rock to canvas?

A. 50,000 of the first class, 75,000 tons of the second class, 100,000 cubic yards of the third class and 250,000 cubic yards of the fourth class.

Q. A total of 125,000 tons of the first and second class, and of 350,000 cubic yards of the third and fourth class?

A. Yes, sir.

Q. How many square yards of brush mattresses were used up to July 31, 1897?

A. 446,102 square yards.

1084 Q. How many yards of rock used?

A. 9814 cubic yards.

Q. How many cubic yards of rock was to that to one square yard of mattress?

A. Every 45 square yards of mat received one cubic yard of stone.

Q. Then there was one 45th, of a cubic yard of stone to each square yard of mattress?

A. Yes, sir.

Q. Now, take the contract, No. 1, and read the following items, the name of work, date of contract, name of contractor?

A. Savannah Harbor, William T. Gaynor, Jan. 16, 1889.

Q. The name of the guarantors?

A. B. D. Green, for $20,000, and Jacob Paulsen for $20,000.

Q. Name of the sureties and amount?

A. Eli I. Bangs, $35,000, Edward Gaybor, $35,000.

Q. Now, the total amount of the bid?

A. $168,550.00

Q. How much has been paid on it?

A. $109,753.76.

Q. Now, contract No. 2, and give me the same information?

A. Contract No. 2, Ansom M. Bangs, Jan. 31, 1889, Cumberland Sound, guarantor Eli I. Bangs, for $20,000, Edward Gaynor for $20,000, and the contractor's bond for $30,000, Eli Bangs for $30,000 and Edward Gaynor for $30,000.

Q. The amount of the bid?

A. The amount of the bid is $123,500.00.

Q. How much has been paid on that?

A. $95,939.92.

Q. Now, take No. 3,

A. Charles C. Ely, May 31, 1889, Brunswick Barbor, amount of bid, $13,215, the guarantors are Jacob Paulsen for $3,000 and W. F. McCaully for $3,000, the contractor's

1085 bond is for $4,000, the sureties and amount, Jacob Paulsen, $4,000 and John F. Gaynor, $4,000; the amount paid, $11,456.28.

Q. Now, take No. 4?

A. William T. Gaynor, Sept. 13, 1889, for Savannah river, the total of the bid $4,400, the guarantors and amount are, Eli T. Bangs, for $2,000, and John F. Gaynor for $2,000; the contractor's bond for $1,800, the sureties and amount, John

F. Gaynor, $1,800, Eli T. Bangs, $1,800, and the amount paid $5,587.31.

Q. Now give me No. 5.

A. Contract No. 5, John F. Gaynor, Nov. 5, 1890, for Savannah Harbor, the total of the bid is $227,500, the guarantors are B. D. Green for $50,000, and Jacob Paulsen, $50,000; the contractor's bond is for $75,000; sureties and amount, B. D. Green, $75,000, Jacob Paulsen, $75,000; the amount paid, $245,850.57.

Q. Now, take No. 6?

A. John F. Gaynor, March 2, 1891, Brunswick Harbor and Jekyl Creek, the total of the bid is $21,270, the guarantors and amount, Ansom M. Bangs, $10,000, William F. McCaully, $10,000, the contractor's bond is $15,000, sureties and amount, William F. McCaully, $15,000, and B. D. Green, $15,000; the total $21,944.60.

Q. That is the amount paid?

A. That is the amount paid.

Q. Now, give me No. 7.

A. Contract No. 7, John F. Gaynor, May 4, 1891, for Cumberland Sound, the total of the bid, $107,830, the guarantors and amounts, B. D. Green, $50,000, Henry Berg, $50,000, the contract, bond $75,000, sureties and amounts, B. D. Green, $75,000, and Anson M. Bangs, $75,000, the amount paid, $100,-908.05.

Q. Now, take No. 8.

A. William H. Walsh.

Q. The date of the contract?

1086 A. July 20, 1891, jetties at Fort Clinch Fla., total of bid, $15,004, the guarantors and the amounts, the proposal, of Charles C. Ely, $5,000, and W. F. McCaully, $5,000, the bond is for $7,500, sureties and amount, W. F. McCaully, $7,500, Charles C. Ely, $7,500, the amount paid is $11,899.71.

Q. Now, No. 9.

A. John F. Gaynor, Sept. 9, 1891 for Savannah river, the total of the bid is $18,915, the guarantors and amounts, William H. Ray, $5,000, John H. Gaynor, $5,000, the bond is for $10,000, sureties and amounts, B. D. Green, $10,000, Thomas F. Gaynor, $10,000, the amount paid $15,289.34.

Q. No. 10?

A. William T. Gaynor, Sept. 16, 1892, Cumberland Sound, the total amount of the bid is $184,520, the guarantors and amounts, B. D. Green, $75,000, William T. Gaynor, $75,000.

Q. What is the note there, is there is one, as to the sureties on the contract?

A. That B. D. Green and William T. Gaynor are also on the bond for Savannah Harbor and Cumberland Sound at the same time.

A. Now look at No. 11?

A. The Atlantic Contracting Company, Oct. 22, 1892, Savannah Harbor, the total of the bid if $1,686,500; the guarantors and amount Anson M. Bangs, $375,000, William T. Gaynor, $375,000, The bond is for $500,000; the name of the sureties and amounts, William T. Gaynor, $300,000, B. D. Green, $350,000, Anson M. Bangs, $350,000, the amount earned is $2,110,869.53.

Q. Is there a note there as to the sureties?

A. Yes, sir.

Q. What is the note?

A. B. D. Green and Wm. T. Gaynor, on bond for Savannah Harbor and Cumberland Sound at the same time.

1087 Q. For what amount in each bond?

A. B. D. Green is on Savannah Harbor for $350,000, and on Cumberland Sound for $100,000, William T. Gaynor is surety on Savannah Harbor for $300,000, and for Cumberland Sound, $100,000.

Q. Look at Contract 10, and give me the amounts there.

A. $162,245.88.

Q. Now, give me No. 12.

A. William H. Walsh, October 24, 1892, Savannah river, above Augusta; the total of the bid is $9,950; the guarantors and amounts, H. M. C. Smith, $5,000, and Jacob Paulsen, $5,000. The bond is for $10,000, sureties and amount, William H. Ray, $10,000, Charles C. Ely, $10,000, the amount earned, $9,421.68.

Q. Now, take 13.

A. The Atlantic Contracting Company, Dec. 20, 1892, for Altamaha river, the total of the bid, is $9,090, the guarantors and amounts, Elton A. Smith, $5,000, William H. Ray, $5,000, the bond for $10,000 name or sureties and amounts B. D. Green, $10,000, William T. Gaynor, $10,000.

Q. The amount paid?

A. The amount paid $11,840.95.

Q. Now take No. 14?

A. The Atlantic Contracting Company, Dec. 20, 1892, for Darien Harbor, the total amount of the bid $15,185, the bond

is for $20,000, sureties and amount, B. D. Green, $20,000, William T. Gaynor, $20,000, the amount paid, $23,433.98.

Q. Now take No. 15.

A. The Atlantic Contracting Company March 1, 1893, Jekyl Creek and Water Ways between Savannah and Fernandina, the total amount of the bid is $19,680, the guarantors and amounts are Edward H. Gaynor, $10,000, W. H. Ray, $10,000; the bond is for $15,000, the name of sureties and amount, $XX Anson M. Bangs, $15,000, Eugene Hughes,
1088 $15,000, the amount paid, is $21,495.78.

Q. Now take No. 16.

A. The Atlantic Contracting Co., March 20, 1893, Brunswick Harbor, the total amount of the bid is $19,070, the name of the guarantors and amounts, William H. Ray, $10,000, W. F. McCaully, $10,000, the bond is for $15,000, the sureties and amounts are Ansom M. Bangs, $15,000, Eugene Hughes, $15,000, the amount paid $16436.93.

Q. Take 17.

A. Albert J. Twiggs, July 5, 1893, total amount of the bid, $12,510, the guarantors and amounts, are Jesse Thompson, $15,000, William H. Numberger, $15,000, the contractor's bond is for $20,000, the sureties and amounts are Jesse Thompson, $20,000, William H. Nunberger, $20,000, amount earned $17,083.59.—The contractor earned $13,170.78, and the United States, $3,912.81, which gives the total of $17,083.59, deducted from contractor for mileage, superintendence, hire of men, purchase of material, $7,185.18, amount paid contractor, $9,898.41.

Q. Look at No. 18.

A. Ansom M. Bangs, Nov. 15, 1894, for Cumberland Sound, the total amount of the bid is $88,500, guarantors and amounts, John F. Gaynor, $75,000, William T. Gaynor, $75,000, the contractor's bond is for $100,000, sureties and amounts, William T. Gaynor, $100,000, and Edward H. Gaynor, $100,000, and the amount paid $159,097.10.

Q. How much was that bid?

A. The bid was $88,500.

Q. How much paid?

A. $159,097.10.

Q. Give me No. 19.

A. William T. Gaynor, April 20, 1895, Altamaha
1089 River, Darien Harbor, Jekyl Creek, and Waterway, the total of the bid was $48,000, the proposal guarantors and

amounts, John F. Gaynor, $40,000, Edward H. Gaynor, $40,000, the bond is for $40,000, the sureties and amounts $ John F. Gaynor, $40,000, Wm. H. Gaynor, $40,000, the total amount paid $45,590.13.

Q. Look at No. 20.

A. The Atlantic Contracting Co., Oct. 8, 1896, for Savannah Harbor, the total amount bid $835,000, guarantors and amounts are Eli I. Bangs, $250,000, and Eugene Hughes, $250,000. Anson M. Bangs and John Hughes, are sureties on Cumberland Sound contract of Oct. 8, 1896, for $500,000 each.

Q. What is the name of the sureties?

A. Ansom M. Bangs and Eugene Hughes. The contractor's bond is $500,000, sureties and amount, of Savannah Harbor, Ansom M. Bangs, for $500,000, and Eugene Hughes for $500,000, the amount paid is not filled out as the contract has not been finished.

Q. Give me No. 21.

A. 20, The Atlantic Contracting Co., Oct. 8, 1896, for Cumberland Sound, the total amount of the bid, $2,141,250, the guarantors and amounts, Eli I. Bangs, $250,000, Eugene Hughes, $250,000, the bond is for $500,000, the sureties and amounts, Anson M. Bangs, $500,000 and Eugene Hughes, $500,000.

Q. Any note there?

A. Ansom M. Bangs and Eugene Hughes are also sureties on Cumberland Sound contract of Oct. 13, 1896.

Q. The amount paid is not carried out as to that contract?

A. No, sir.

Q. The contract has not been completed.

Here the Court at 2.50 o'clock p. m. adjourned until tomorrow morning, Feb. 5th, at 11 o'clock.

THOMAS F. BARR,
Col. & Asst., Judge Adv. Gen'l, Judge Advocate.

1090 United States Court Room,
Savannah, Ga.,
February 5th, 1898.

Court met pursuant to its adjournment of yesterday at 11.04 o'clock a. m.

Present: All the members of the Court and the Judge-Advocate.

The accused, his counsel, and the reporter, W. O. Tarver, were also present.

The President: The Court will come to order.

Judge-Advocate: May it please the Court, I wish to interrupt the examination of Mr. Sterly for a short time, to place a witness on the stand, the Chief Clerk of the War Department, whose duties require that he should return as soon as possible.

JOHN TWEEDALE, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by the Judge-Advocate.

Q. Please state your full name?
A. John Tweedale.
Q. What is your official position under the government.
A. Chief Clerk of the War Department.
Q. How long have you held that office?
A. Since 1882.
Q. When you became Chief Clerk, and for the period subsequent, what was the practice of the Department in passing upon requests for authority to advertise.
A. The requests come, in accordance with the regulations, to the Chief Clerk of the Department, and then they are submitted to the Secretary of War for his action. The Secretary decides in what papers the advertisement shall be inserted, and gives instructions accordingly, and thereupon approves the request for authority.
1091 Q. Is any other matter submitted to him in connection with that request for authority to advertise?
A. Nothing whatever, but the papers show the intermediate endorsements.
Q. What action, if any, is taken in the Department upon the copy of the proposed advertisement?
A. The copy of the proposed advertisement is merely

looked at, to see whether there are any superfluous words in it. The regulations require that it shall be concise in matter; that is as far as the advertisement is looked at.

Q. The approval of the Secretary given to that request to advertise, how far does it go towards approving the form and dates of the advertisement?

A. That is not considered.

Q. Not at all?

A. Not at all.

Q. To whom is that left,—the question of dates?

A. That is left to the advertising Officer, who knows all about those things; the Department knows nothing about it.

Q. Why is it that the authority of the Secretary of War is necessary to advertise?

A. The law requires it.

Q. Do you recall the statute?

A. If I remember, it is Section 3828 of the Revised Statutes.

Judge-Advocate: I call the attention of the Court to the law found in the Revised Statutes of the United States, Second Edition, 1878, page 749, Section 3828.

(Reading) "No advertisement, notice, or proposal for any Executive Department of the Government, or for any Bureau thereof, or for any office therewith connected, shall be published in any newspaper, except in pursuance of a written authority for such publication from the head of such
1092 Department; and no bill for any such advertising, or publication, shall be paid, unless there be presented, with such bill, a copy of such written authority."

Q. In passing upon a request for authority to advertise, and submitting it to the Secretary of War, if the proposed advertisement bore a date prior by four or five weeks to the date on which you submitted it to the Secretary, would that date be a factor in passing upon the question?

A. Not at all.

Q. It would not matter what the date was?

A. No.

Q. Nor how long anterior to the date submitted?

A. No, sir.

Judge-Advocate: I submit to the witness a request of the accused, under date of June 4, 1896, for authority to advertise, inviting proposals for constructing jetties in Cumberland Sound, Georgia.

Q. That (handing witness paper) is a communication ad-

dressed to you; that (handing witness paper) is the proposed advertisement that accompanied it; and this (handing witness paper) is a copy of the specifications submitted with the letter. That is Exhibit No. 50. You note the date of approval is August 15, 1896, by Secretary of War Lamont; you have noted that fact?

A. Yes, sir; I have seen that.

Q. And that the advertisement has the date of June 6th?

A. Yes, sir.

Q. That advertisement appears to have been acted upon as to its contents in what way? Please state.

A. The approval of the Secretary of War was only to authorize the officer, Capt. Carter, to insert the advertisement in the newspapers designated in the letter. The dates that are fixed here, of course, hadn't anything to do with the approval of the Secretary of War.

Q. You see some changes made in the form of the ad-
1093 vertisement; what are those changes?

A. These are superfluous words that are crossed out in accordance with the regulations: "U. S. A., All, Corps." They were regarded as superfluous and stricken out in order to reduce the cost of advertising.

A. Do you remember when the specifications were submitted to you?

A. At the same time.

Q. The same file number?

A. The same file number; inclosure 2 of that paper.

Q. Look at the change of dates there.

A. "Savannah, Ga., Aug. 29, 1894. Aug. 29, 1894," is stricken out, and "June 6, 1896," inserted. The "6" is written in black ink, and the balance in red ink.

Q. Was that in that shape when it passed through your office?

A. There is nothing on these specifications to indicate whether it was or not. I would say, from my knowledge of such things, that the changes were not made in the office of the Secretary of War.

Cross-Examination by Mr. Blair.

Q. Will you say that the changes just referred to were not made in the War Department in Washington?

A. I can only speak for the office of the Secretary of War.

Q. Will you say they were not made there?

A. I would say that, from my knowledge, of what they do in the office of the Secretary of War that it would be a very extraordinary thing to make these changes in the specifications in the office of the Secretary of War.

Q. You would not say they were not made by the Chief of Engineers?

A. I would not.

Q. In this form of advertisement, which you have inspected, and concerning which you have testified that
1094 certain words were stricken out,—where were those words stricken out?

A. They might have been stricken out in the office of the Chief of Engineers, or in the office of the Secretary of War.

Q. You cannot say which?

A. I could not say.

Q. What was the advertisement authorized to be printed by Capt. Carter in the War Department?

A. The advertisement the Secretary of War authorized to have printed was authority for Capt. Carter to advertise for bids for constructing jetties at Cumberland Sound. The details, of course, of that advertisement were left to him.

Q. To whom?

A. To Capt. Carter.

Q. Why, then, were those words stricken out?

A. "United States, Corps," and "All."

Q. Yes.

A. Because the regulations require that the advertisement shall be concise and shall have no superfluous words.

Q. Suppose Capt. Carter had recast that whole advertisement,—put in into diffeernt language, but conveying practically the same meaning, would that have been authorized?

A. I think it would, unless he had made the advertisement so long that it would have been more expensive.

Q. Is there any regulation or instruction from the War Department authorizing district engineers to change portions of advertisements after they have come back?

A. I cannot testify to that; that would be a matter of regulation in the engineer department.

Q. Is there any regulation authorized by the Secretary of War, that you know of, which permits or directs, district engineers to change the wording in any part of an advertise-

ment which has come back to him through the Secretary of War?

1095 A. So far as I know, there is no regulation authorizing that.

Q. Or directing him to do it?

A. There is no regulation preventing him, or directing him to do it.

Q. Then the authority for him to recast, or change, any portion of that advertisement is merely an implied, and not a written, one?

A. The officer is required by his commission to do everything necessary for the benefit of the service, and the obligation rests upon him.

Q. Then the authority to change an advertisement after it has been approved by the Secretary of War is based solely upon the general duty of the officer to conserve the interest of the Government?

A. Yes, sir.

Q. And not upon any special regulation, written or printed?

A. No; there is no specific regulation requiring how he shall word an advertisement, except that he shall omit superfluous words and make it concise, and of course, it is his duty to see that the advertisement is correct.

Q. Then when it comes back to him in that form, there is no written or printed authority expressly authorizing him to make any change?

A. As far as I remember, I don't think there is.

Q. This regulation, or custom, as to advertisements, which you have testified to,—the whole matter of advertisements,—were they substantially the same from 1882 down to the present time?

A. Substantially from 1882 down to the present time. There were some slight changes where required by subsequent legislation.

Q. It does not affect anything to which you have testified this morning?

1096 *Re-direct Examination by the Judge-Advocate.*

Q. Is the date any part of the advertisement?

A. Not so far as the approval of the Secretary of War is concerned.

Questions by a member of the Court.

Q. Suppose an advertisement was sent by a district engineer to the War Department with the date of advertisement and the date of opening the bids inserted, and it received the approval of the Secretary of War, and came back to the district engineer, and it was manifest from the date of the opening of the bids which that advertisement bore, that there was not a sufficient length of time intervening between the first insertion of the advertisement in the newspapers and the date of the opening of the bids,—what would be the responsibility and duty of the district engineer in regard to that matter?

A. The regulation provides that he shall give 30 days' notice, and, if the advertisement when it came back to him,—if the dates were such that there would not be 30 days' notice, it would be his duty to comply with the regulations, and give it the notice required by the regulations.

Q. In what way?

A. He would have to change the dates in the advertisement. The Secretary of War could not change the dates for the reason that, if he did, there might be a delay in the mails, or from some cause,—and when it got back to the officer, there would not be the 30 days required.

1097 Questions by the Court.

Q. Is it customary for all officers to insert the dates in making their applications for authority to advertise?

A. Sometimes the dates are left blank.

Q. That makes no difference as far as the approval is concerned?

A. No, sir.

Q. Don't consider the dates in any particular in the advertisement?

A. No, sir; don't consider the dates. The Secretary is required to authorize the insertion of the advertisements, and his approval merely authorizes it to be inserted in certain newspapers named by him.

Q. The War Department, then, is governed in this particular by the general regulations of the army?

A. Yes, sir; by the general regulations.

Q. It is a rule then, laid down as a rule, in the paragraphs of the regulations, that in all advertisements for supplies, there shall be a period of thirty days intervening between the first publication of the advertisement and the opening of the proposals, as a rule?

A. As a rule.

Q. Do you adhere to that rule?
A. Yes, sir; except in cases of necessity.
Q. Does the Secretary in approving these advertisements ever find that necessary?
A. No, sir.
Q. Is he presumed to find it in any way?
A. No; he does not. That is a matter for the officer or Chief of the Bureau.
Q. Rests entirely with the officer?
A. Yes, sir.

1098 *Re-Cross Examination by Mr. Blair, with Permission of the Court.*

Q. Does that regulation prescribe that 30 days shall intervene, did I understand you?
A. I will show you the regulation.
Q. (Handing witness book) Paragraph 520 at the top of the page.
A. (Reading) "In cases of large purchases a period of 30 or more days should intervene between date of first publication and of opening proposals. In small purchases, from ten to thirty days should intervene, and when the public exigency (constituting an emergency) does not permit ten days to intervene the period should be for as many days as the circumstances will permit."
A member: I would like to have paragraph 519 read.
Witness: (Reading) "An officer charged with the duty of making a contract or purchase is responsible under the laws and regulations for his action. Permission or orders to make a contract or purchase without inviting competition will not justify the procedure, and will not be given."
The President: You didn't finish the first paragraph you were reading.
Witness: (Continuing to read from paragraph 520) "Advertising for proposals by newspapers, in accordance with Article LIV, will be adopted when time permits, and the quantity or value of the purchase, or character of the services, in the opinion of the purchasing officer, will justify the expense. When notice of less than thirty days is given, advertising by circulars (sent to principal dealers) in the localities where the supplies or services are desired, and posted in public

places, is permissible. A purchasing officer may ad-
1099 vertise by newspapers and circulars at the same time."

The Court: Now refer to Article LIV, paragraph 505, taken in connection with that.

Witness: (Reading) "505. Advertisements in newspapers, announcing sales of property or inviting proposals for furnishing labor or supplies, will, as a rule, allow thirty days to intervene between date of first publication and date of sale or opening of bids. If necessity require, a shorter period may be allowed, but no period of less than ten days will be designated except in case of emergency. No officer will authorize the publication of an advertisement beyond the morning of the day on which the sale or opening of bids is to occur, and no payments will be made for continuing such publication beyond the period authorized."

Q. (Mr. Blair continuing examination) These regulations are published by authority of the Secretary of War?

A. By authority of the Secretary of War.

Q. And the Secretary of War may at will, revoke or change any of these regulations?

A. No; the Secretary of War is bound by the regulation until he publishes another regulation amending it. He must publish it; he cannot, in any case that just comes before him, change it.

Judge-Advocate: I will read to the Court the direction accompanying the issue of regulations always, for the regulations of 1895 as well as all previously issued. (Reading)

"War Department, Oct. 31, 1895.

The President of the United States directs that the following Regulations for the Army be published for the government of all concerned, and that they be strictly observed. Nothing contrary to the tenor of these Regulations will be
enjoined in any part of the forces of the United States
1100 by any commander whomsoever.

DANIEL S. LAMONT,
Secretary of War."

Witness excused.

J. W. O. STERLY, a witness for the prosecution, previously sworn, resumed the stand and continued to testify as follows:

Direct Examination by the Judge Advocate.

Q. You have your chart with you again?
A. Yes, sir.
Q. Referring to contract No. 21 of the table, you testified yesterday that there were 9813 cubic yards of stone used under the present contract at Cumberland Sound, is that correct?
A. There was an error in that statement which I have corrected.
Q. By reference to the public records?
A. Yes, sir.
Q. You have it now correct?
A. Yes, sir.
Q. What is the amount?
A. I omitted to put in this table 11,985.84 cubic yards of fourth class rock, and the rock which was in the column for third class rock I had erroneously put in the column for the fourth class rock.
Q. With the correction, how many cubic yards of rock was used to one square yard of mattress?
A. With the correction, there was 1/20 of a cubic yard used for every square yard of mattress.
Q. Instead of 1/45 as you stated yesterday?
A. Yes, sir.
Q. Are there any other corrections?
1101 A. Yes, sir; in contract No. 11.
Q. What is the correction you made there?
A. The cross against the name of W. T. Gaynor should be removed so that the remarks read: "B. D. Green on bond for Savannah Harbor and Cumberland Sound," at the same time omitting "W. T. Gaynor." In contract No. 10, the cross should be removed from "W. T. Gaynor," and the name of the surety changed from W. T. Gaynor to John F. Gaynor. In contract No. 2, the surety Edward Gaynor, should be changed to B. D. Green. I changed on the table, contracts Nos. 20 and 21. I made it distinctive that the first class and second class rock was by tons, and the third and fourth class rock was by cubic yards. In contract No. 14, I had ten

tie piles put in the wrong column. They are put now in the column for "clusters of fender piles." In contract No. 11, I inserted 50,000 lineal feet of pile work in the column of "Quantities to canvas bids." In the "Amounts Used" I inserted "lineal feet" of pile work, 39,548. Those are all the corrections I have found. I have not been able to check all of these prices.

Q. You will check them as soon as you have time?

A. Yes, sir.

Q. Comparing that item by item, with the public records?

A. Yes, sir.

Q. So that you can come before the Court and testify to its absolute accuracy?

A. Yes, sir. I have added in the column of "Superintendence United States," under contract No. 19, the name of E. R. Conant, and T. J. Daniels. I have added under the column "Superintendence Contractors," Contract No. 9, the name of M. F. Wheeler, and I have added to the table the Act of Congress under which the money was appropri-
1102 ated and a column, showing when work was begun and work ended under each contract, with the exception of Savannah Harbor and Cumberland Sound, present contract, which was not then completed.

Judge-Advocate: I want to state to the Court that I have worked Mr. Sterly very diligently, and to a late hour every night, every since my arrival here, and it is not to be wondered at that some trivial errors have crept into a compilation involving so much labor as this.

Q. Read the bidders on contract No. 6.

A. The name of bidders: Charles C. Ely and John F. Gaynor, contract for Brunswick and Jekyl Creek.

Q. Who was the successful bidder?

A. John F. Gaynor.

Q. Was that on contract No. 6?

A. On contract No. 6.

Q. Who are the sureties for Charles C. Ely?

A. Jacob Paulsen for $10,000, and W. H. Ray for $10,000.

Q. Who are the bidders on contract No. 8?

A. Edward H. Gaynor and William H. Walsh, for jetties at Fort Clinch.

Q. Who are the sureties for Edward H. Gaynor?

A. John F. Gaynor for $5,000, and W. H. Ray for $5,000.

Q. Who are the sureties for William H. Walsh?

A. Charles C. Ely for $5,000, and W. F. McCaully for $5,000. They are the guarantors on proposals.

Q. Who are bidders for contract No. 10?

A. Charles C. Ely, William H. Walsh, and Edward H. Gaynor.

Q. Whose are Charles C. Ely's guarantors?

A. Jacob Paulsen for $75,000, and W. H. Ray, for $75,000.

Q. Who were W. H. Walsh's guarantors?

A. W. F. McCaully for $75,000 and Myron J. Wheeler for $75,000.

Q. Do you know who Myron J. Wheeler is?

1103 A. He was foreman for the Atlantic Contracting Company. He was at one time foreman for John F. Gaynor, on the Augusta work.

Q. Take contract No. 16, who are the bidders?

A. Contract No. 16, Charles C. Ely and the Atlantic Contracting Company.

Q. Take the bids for brush mattresses ans stone for Cumberland Sound for 1891; what are the bids?

A. S. W. Skinner and T. E. Wallace, $1.16 for mattresses per square yard.

Q. How much for rock?

A. $4.08 per cubic yard.

Q. Who was the other bidder?

A. John F. Gaynor, 97 cents per square yard for mattresses and $3.49 per cubic yard for rock; P. Sanford Ross, $1.22 per square yard for mattresses, and $3.59 per cubic yard for rock.

Mr. Rose: There are two bids on two different kinds of mattresses in that contract; one for log mattresses and the other for brush mattresses.

Q. (The Judge Advocate continuing) Read the bids for log and brush mattress.

A. S. W. Skinner and T. E. Wallace, $1.20; John F. Gaynor, 99 cents; P. Sanford Ross, $1.22.

Q. That is the same price that P. Sanford Ross bid for the mattresses?

A. For the mattresses.

Q. Take the contract for 1892.

A. Charles C. Ely, $1.32 per square yard of mattress, $3.78 per cubic yard of rock; W. H. Walsh, $1.26 per square yard of mattress and $3.72 per cubic yard of rock; Edward

H. Gaynor, $1.05 per square yard of mattress and $3.59 per cubic yard of rock.

1104 Q. Now in 1894.

A. Ansom M. Bangs, 57 cents per square yard of mattress, and $2 per cubic yard of rock; R. G. Ross & Co., 85 cents per square yard of mattress, and $2.85 per cubic yard of rock; Rittenhouse R. Moore, 90 cents per square yard of mattress and $2.80 per cubic yard of rock.

Q. How does the bid of R. G. Ross & Co., compare with the bid of the successful bidder two years before?

A. Edward H. Gaynor bid in 1892 for mattress $1.05 per square yard, and Ross & Co., bid under this contract in 1894 85 cents per square yard of mattress; Edward H. Gaynor bid $3.59 per cubic yard of rock in 1892, and Ross & Co. bid $2.85 per cubic yard of rock in 1894.

Q. What are the prices in 1896 per square yard of mattress?

A. The Atlantic Contracting Co., $1.10 at Cumberland Sound.

Q. How much for rock?

A. First class rock, $5.25 per ton; second class rock, $5.25 per ton; third class rock, $3.90 per cubic yard, and fourth class rock, $3.50 per cubic yard.

Q. How do the quantity of brush mattresses to be used in 1896 compare with those to be used in 1894?

A. There were to be used in 1896 200,000 square yards of mattress, and in 1894. 50,000 square yards of mattress.

Q. Now compare the quantities of rock.

A. There were to be used in 1894 30,000 cubic yards of rock, and there were to be used in 1896 125,000 tons of rock, and 350,000 cubic yards of rock.

Q. Take contract No. 3 of Charles C. Ely, Brunswick harbor, May 1, 1889; when did the River and Harbor Bill making the appropriation, pass?

1105 A. August 11, 1888.

Judge-Advocate: I shall have to ask the Court for a recess. My stenographer has an exhibit which I wish to use at this point.

At this point, 11.40 a. m. Court took a recess until 12.12 p. m., when Court was called to order, and the examination of the witness continued as follows:

Q. I hand you miscellaneous letter book, No. 5, and on page 160 there is a letter from the accused to the Chief of Engineers, stating that, "The bid of Mr. Howell is informal, being

unaccompanied by guarantee and being made out only in duplicate, and in view of these facts and of the fact that Mr. Howell failed while executing work upon Savannah River some years ago, I do not think his bid should be considered." Is there any evidence on file in the office of the District Engineer in Savannah here that Mr. Howell ever failed on a contract?

A. No, sir.

Q. You have looked for that?

A. Yes, sir.

Q. How many months had that appropriation been available when that contract was made?

A. I don't remember the date of the passage of the Bill, whether it was in August or September, 1888.

Q. You may refresh your memory by looking on this chart.

A. Nine months.

Q. How long did it take to do the work?

A. Two months and six days.

Q. How much was the total of Ely's bid?

A. The total of Ely's bid was $13,215.

Q. How much was Howell's?

A. $11,020.

Q. How much less was that than Ely's?

1106 A. $2,195.

Q. How much was Ely paid on the whole contract?

A. Ely was paid $11,456.28.

Q. Have you made a computation of how much it would have cost if Howell had been given the contract and had done the same work?

A. Yes, sir.

Q. What would it have cost?

A. Quantities used at Howell's price, $7,473.34.

Q. Saving to the Government, how much?

A. There is a difference of $3,982.94.

Q. How many checks were drawn to Charles C. Ely under that contract?

A. There were three checks drawn.

Q. Which one was lost in transmission by B. D. Green?

Mr. Blair: There is no evidence that B. D. Green lost a check.

Judge-Advocate: There is evidence by Act of Congress, that B. D. Green enjoyed the proceeds of it; that the loss was his.

Mr. Blair: The check was lost by the United States in the mail.

Judge Advocate: Yes, but I think the evidence will show that it was lost in transmission by B. D. Green, and that an Act of Congress was made in his behalf, and that he received the proceeds. The Act of Congress is in evidence.

Q. (Judge-Advocate continuing) Look at S. R. page 143.

A. (Witness handed the Judge-Advocate the book and page referred to)

Judge-Advocate: I offer in evidence and read the following:

United States Engineer Office,
Savannah, Ga., Sept. 7, 1891.

1107 Mr. John F. Gaynor,
Fayetteville, N. Y.

There are sent you herewith, for execution and prompt return by registered mail, articles of agreement in quintuplicate and bonds in triplicate for work of repairing and constructing wing-dams and shore protection in the Savannah River, below Augusta, Ga.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt., Corps of Engrs., U. S. A.

(8 enclosures.)

Q. Page 145, same letter book, who put that "M. F. Wheeler, Pulaski House, Savannah, Ga." there?

A. It is Mr. Connolly's writing.

Judge-Advocate: I offer in evidence and read the following:

"Memorandum.
"United States Engineer Office,
"Savannah, Ga., Sept., 14, 1891.

"Mr. M. F. Wheeler,
"Pulaski House, Savannah, Ga.

"Fascines for Savannah River,—near Augusta.

"(1) At Sand Bar Ferry, Georgia Side of River:
For Dams 'A' and 3.

150 cubic yards fascines 20 feet long.
150 cubic yards fascines 15 feet long.

"(2) At Course's Bar, Georgia Side of River:
Dam #6 (upper) and Dam #9, (middle).

150 cubic yards of 15 foot fascines.

"(3) At points about 200 feet, 600 feet and 1,000 feet below East Boundary St., of City of Augusta, on Georgia side of River:

Not more than 1,800 cubic yards of 20-foot fascines.

"(until further orders).

"G. W. B."

1108 Q. What do those initials indivate?

A. George W. Brown.

Q. Who was George W. Brown?

A. He was assistant engineer, in the employment of the office.

Q. In September 1891?

A. Yes, sir.

Judge Advocate: I offer in evidence and read:

"United States Engineer Office,
Savannah, Ga., Sept. 28, 1891.

Mr. M. J. Wheeler,
Gen Delivery P. O.,
Augusta, Ga.

Sir:

Please let me know at once when you will be ready to begin work at Augusta.

Very respectfully
Your obedient servant,
O. M. CARTER,
Capt. Corps of Engrs. U. S. A."

Judge-Advocate: The next letter appears to be a duplicate of that letter, with the added memorandum in pencil, "Mr. Wheeler's Augusta address is Atkins House. M. A. C."

Q. Who was that written by and whose initials are those?

A. M. A. Connolly's.

Q. That memorandum is in Mr. Connolly's writing?

A. Yes, sir.

Judge Advocate: I offer in evidence and read:

"United States Engineer Office,
Savannah, Ga. Sept. 28, 1891.

Mr. John F. Gaynor,
Fayetteville, N. Y.

Sir:

1109 There is sent you herewith, copy of contract entered into with you for repairing and constructing wind-dams and shore protection in the Savannah river, below Au-

gusta, Georgia, approved by the Chief of Engineers, U. S. Army, Sept. 18, 1891.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. Corps of Engineers U. S. A.

(1 inclosure)"

Q. (Showing witness S. R. letter book, page 153) Whose writing is that?

A. Mr. J. B. Connolly's handwriting.

Q. Another Connolly?

A. Yes, sir.

Judge-Advocate: I offer in evidence and read telegram as follows:

"Savannah, October 5 1." evidently 1891.

"M. J. Wheeler, foreman Atkins House, Augusta, Ga.? Inspector arrives tomorrow morning Central road. Meet him. Carter, Engrs. Paid Offl Business Government rate."

Q. Have you examined the records to see if any communication could be found addressed to the inspector or to Mr. Gaynor during the life of that contract?

A. I have not found any record.

Q. Have you made diligent search?

A. Yes, sir, I have.

Q. Such a search that, if such record existed, you would have found it?

A. I would have found it.

Q. Then you can testify that there is no such record 1110 in the office?

A. Yes, sir unless there is a letter copied in the wrong book.

Q. That is an accident that could take place in the office?

A. That is an accident that might take place.

Q. Who did the copying of the letters?

A. In most cases Mr. Connolly, but nearly every body in the office copied, just as we had time. If Mr. Connolly was pressed with work, I did it or Mr. J. B. Connolly did it.

Q. Who was the clerk principally engaged upon correspondence?

A. Mr. M. A. Connolly.

Q. Did each of the other clerks when so engaged, do their own copying?

A. Sometimes the third clerk copied,—very often he copied; anybody who had time copied, to facilitate the work.

Q. Do you know of any copy book or letter press book in the office, outside of these books which you have designated, having relation to the different improvements?

A. No, sir, I do not.

Q. You have had occasion to go over the different letter books kept in the office at that time,—August, September, October and November, 1891?

A. Yes, sir.

Q. You have gone pretty fully through that period, or entirely through that period?

A. From time to time, I go always over the records,—over the correspondence.

Q. While in the progress of this investigation?

A. I have gone pretty thoroughly over all the records.

Q. And have not found anything in the books, any communication of any kind addressed to Mr. Gaynor or Mr. Wheeler in relation to that contract?

A. I haven't found anything.

1111 Q. Do you keep an index to your letter press book?

A. Yes, sir; it is right attached here.

Q. Will you examine the index or have you examined the index?

A. I have examined the index.

Q. No such communication, then, is indexed?

A. No, sir.

Q. If instructions were copied at all in any book, it was in some book that did not belong to the office records?

A. Yes, sir.

Q. Or found among the office records?

A. Yes, sir.

Cross-Examination by Mr. Rose.

Q. Yesterday you testified with reference to the bid for the work at Darien that part of it was in the handwriting of John F. Gaynor and part in the handwriting of Mr. Connolly?

A. Yes, sir.

Q. Do you know whether, at that time, Mr. Connolly was a United States Commissioner?

A. He was a United States Commissioner at that time.

Q. You yesterday gave testimony here with reference to the amount of work done under each one of these contracts?

A. Yes, sir.

Q. How often were reports made to the Division Engineer and to the Chief of Engineers as to the progress of the work here?

A. To the Chief of Engineers every month.

Q. That was through the Division Engineer?

A. The Division Engineer received a copy.

Q. And those reports, in every instance, showed the amount of work done the preceding month?

A. Yes, sir.

Q. Both of mattress and of rock work?

1112 A. Yes, sir.

Q. Or any other kind of work?

A. Yes, sir.

Q. Was there an annual report made to the Chief of Engineers?

A. Yes, sir.

Q. Did that annual report show the contracts that had been let during the preceeding year for the various improvements?

A. Yes, sir.

Q. Did it show the names of the bidders on each one of those contracts?

A. Yes, sir; on the abstract which was attached.

Q. And the amounts bid for each kind of work, or material, by each bidder?

A. The total amount bid.

Q. And the amount per yard or per ton?

A. Yes, sir.

Q. And that report to the Chief of Engineers was afterwards published?

A. That was published.

Q. And accessible to any one?

A. Yes, sir.

Q. When the abstract of proposals or bids was sent to the Chief of Engineers, were the proposals themselves all sent to the Chief of Engineers?

A. No, sir.

Q. They were not?

A. One copy.

Q. A copy of each proposal?

A. Of each proposal was sent to the Chief of Engineers.

Q. One of those was an original?

A. They were made out in triplicate, and one sent to the Chief of Engineers.

Q. Not only the successful, or lowest bidder, or the
1113 one recommended by the engineer in charge, but one of all of them?

A. Yes, sir.

Q. When the bid was awarded by the Chief of Engineers, and notice received here, a contract was executed with the successful bidder, was it not?

A. Yes, sir.

Q. That was executed in how many parts?

A. Five parts.

Q. Were they sent, the whole five, to Washington to be approved by the Chief of Engineers, or were any of them?

A. Yes, sir; but not all five.

Q. How many?

A. I have to refresh my memory on that.

Q. They were all sent, were they not, and then came back again?

A. (After reference to book) The contracts were all sent, but I am looking here on account of the bonds; in former years they were sometimes sent in triplicate, and then in duplicate.

Q. The contracts were all sent?

A. Yes, sir.

Q. In sending the proposals submitted, the guarantees attached to the proposals formed part of it?

A. Yes, sir.

Q. And they went to Washington?

A. They went to Washington.

Q. With reference to the contract itself, was the bond of the contractor attached to the proposal and sent to Washington?

A. After the contract was approved.

Q. After the contract was executed, and sent to Washington, to be approved by the Chief of Engineers, was the bond sent with it?

A. Yes, sir.

Q. And that came back approved?

1114 A. Yes, sir; one copy came back.

Q. You have testified this morning as to the prices for rock in Cumberland Sound, in 1894 and 1896,—the prices bid?

A. Yes, sir.

Q. In one case, $3.90, and in the other $5.25, for first class rock; do you know, of your own knowledge, whether the rock

under those two contracts was to be put in the same place? Do you know where the rock was to be put under the 1896 contract,—in what part of the work?

A. No, sir, I do not.

Q. I show you a book stamped "20", the regulations; read what it says on the first page?

A. (Reading) "Regulations for the goveenment of employes of the United States Engineer Department in the District of Savannah Georgia, 1892".

Q. Do you recognize that as one of the books from the Engineer Office?

A. Yes, sir.

Q. Do you know the signature, or handwriting, of Marion Twiggs?

A. Yes, sir.

Q. Look at the pencilled name there and tell me in whose handwriting that is?

A. That is Marion Twiggs' handwriting.

Mr. Blair: It is Defendant's Exhibit No. 7 for identification.

Q. The Judge Advocate produced the other day, and read part of, an article of agreement and specifications attached, dated Oct. 28, 1886, for constructing training walls &c., in Savannah Harbor and River, Ga.; (Handing witness paper) do you recognize that as the paper?

A. Yes, sir; I recognize that as a paper from Gen. Gilmore's office.

Q. From the office of the engineer here in Savannah?

A. Yes, sir; came from Gen. Gilmore's office.

1115 Do you know whether a supplemental agreement was made in relation to that same work?

A. I think in December.

Q. (Handing witness paper) That is the supplemental agreement that relates to this contract,—the one I just showed you?

A. Yes, sir; Merrifield's handwriting.

Mr. Rose: I desire to read from the paper produced, and read in part, by the Judge Advocate. He read that part in relation to bundles of compact brush. I desire to read the advertisement as it appears in the specifications. (Reading) "Advertisement. United States Engineer Office, Army Building, New York, September 11th, 1886. Sealed proposals, in triplicate, to be opened at 12 o'clock noon, on the 30th, day of Sept—1886 are invited for the construction of Wind Dams

and Training Walls in Savannah Harbor and River, Georgia, for the construction of jetties at Cumberland Sound, Georgia and Florida, and also for continuing work upon the jetty in Brunswick Harbor, Georgia."

The rest of it is in relation to proposals for each of the works, I don't care to read that. It is signed, "Q. A. Gillmore, Colonel of Engineers, Brevet Major-General U. S. A."

I desire to read an have on the record, from the supplemental contract in relation to the contract I have just read, the following: "The fascines shall be made of live brush, well trimmed, the butts placed in alternate directions and closely choked. They shall be from ten to twenty feet long, from twelve to fifteen inches in diameter, and tied with from four to six bands of wire or tarred rope, and shall be placed in the work singly or in mats, in such places, quantities and manner as may be directed by the Engineer in charge." This supplemental contract was between Col. Q. A. Gillmore
1116 Corps of Engineers, of the One Part and John F. Gaynor, of the Other Part and is dated Dec. 22, 1886. The original contract of October 28, 1886 provides for compact bundles of brush on top of the logs.

Q. (Handing witness papers) Do you recognize these as papers from the files of the Engineer Office?

A. Yes, sir.

Q. One is the signature, as you plainly see, of Gen. Gillmore.

A. Of Gen. Gillmore; yes, sir.

Mr. Rose:—I desire to read, and have upon the record the following letter:

"October 8th, 1881.

Brig. Gen. H. G. Wright,
Chief of Engineers U. S. A.,
Washington, D. C.

General:

I have the honor to transmit herewith a copy of an advertisement, inviting proposals for continuing the construction of jetties at the entrance to Cumberland Sound, Florida, and have to request that, if approved, it be forwarded with the accompanying letter to the Chief Clerk of the War Department.

Very respectfully,
Your obedient servant,
Lieut. Col. of Engineers.
Brevet Major-Gen. U. S. A."

The signature is so dim I cannot read it.

Q. (Handing witness paper) Is that a paper from the files of the Engineer office?

A. Yes, sir.

Mr. Rose: The paper shown the witness is indorsed
1117 "Articles of Agreement, entered into Nov. 26, 1881, between Lieut. Col. Q. A. Gillmore, Lieutenant Colonel of Engineers, of the One Part, and A. M. Newton, of New York City, of the Other Part, for constructing jetties at entrance to Cumberland Sound, Florida and Georgia."

The advertisement which is at the head of the specifications, is as follows:

"United States Engineer Office,
Army Building, New York, October 11, 1881.

"Sealed proposals in triplicate, addressed to the undersigned, will be received at this office until 12 o'clock, noon, on the first day of November, 1881, at which time and place they will be opened in the presence of bidders, for continuing the construction of jetties at the entrance to Cumberland Sound, Florida.

Q. A. GILLMORE,
Lieut. Colonel of Engineers, Brevet Major-Gen. U. S. A.

The other letter that was identified by the witness is dated Nov. 1, 1881. The Court will bear in mind that bids according to that advertisement, were to be opened the first day of November, and the advertisement was dated the 11th of October; nineteen days. (Reading)

"Nov. 1, 1881.

"Mr. A. M. Newton,
149 Front St., New York, City.

Sir:

You are hereby notified that your proposal for improvement of entrance to Cumberland Sound, Florida, in response to my advertisement, dated October 11, 1881, is accepted, subject to the approval of the Chief of Engineers.

The necessary contract papers will be prepared as soon as practicable.

1118 Very respectfully,
Your obedient servant,

Q. A. GILLMORE,
Lieut. Colonel of Engineers, Brevet Major Gen. U. S. A.

Q. (Handing witness paper) I show you three papers and

ask you if they are from the files of the Engineer Office in this city?

A. Yes, sir.

Mr. Rose: I read first from one of the papers just identified by the witness, the following letter.

"November 4 2" "

I judge it is 1882.

"Brig. Gen. H. G. Wright,
Chief of Engineers, U. S. A.,
Washington, D. C.

General.

I have the honor to forward herewith a copy of an an advertisement, inviting proposals for building Training Walls and Wing Dams in Savannah Harbor and River, Ga.

"If approved, I have the honor to request that it be forwarded with the accompanying letter to the Chief Clerk of the War Department.

Very respectfully,"

The name is faded out

"*Lieut. Col. of Engineers, Brevet Major-Gen. U. S. A.*"

Fastened to this is the following letter:

"November 4 2

"Sir:

I have the honor to inclose herewith a copy of an advertisement inviting proposals for constructing Training Walls and Wing Dams in Savannah Harbor and River, Ga., and respectfully request authority to publish the same in the 1119 following named official newspapers:

6 insertions in the New York, N. Y. Times,
6 do do New York N. Y. Commercial Adv.;
6 do do Philadelphia Pa. North-American;
6 do do Baltimore Md. American;
6 do do Savannah, Ga., Recorder;

Very respectfully, your obedient servant,
Lieut. Col. of Engineers,
Brevet Major-Gen. U. S. A."

"To the Chief Clerk War Department, Through the Chief of Engineers, U. S. A.
(One Enclo.)"

And fastened to that is the following advertisement:

"Advertisement.

"United States Engineer Office,
Army Building, New York, Nov. 4, 1882.

"Sealed proposals in triplicate addressed to the undersigned, will be received at this office until 12 o'clock, noon, on the 20th day of November, 1882." (The "20" is erased in blue pencil, and above is written in the same blue pencil "18.) "at which time and place they will be opened in the presence of bidders, for continuing the construction of Wing Dams and Training Walls in Savannah Harbor and River, Ga.

"Specifications, instructions to bidders, blanks for proposals, etc., may be obtained at this office, or from Capt. James C. Post, Corps of Engineers, Charleston, S. C.

Q. A. GILLMORE,
Lieut. Colonel of Engineers, Brevet Major-Gen. U. S. A."

I read from the paper identified by the witness, and indorsed. "Articles of Agreement, entered into Dec. 20, 1882, between Capt. James C. Post, Corps of Engineers, of the One Part, and Eli T. Bangs, of the Other Part, for Con-
1120 structing Wing Dams, &c. in Savannah Harbor and River, Ga."

The advertisement is as follows:

"Advertisement.

United States Engineer Office,
Army Building, New York, Nov. 4, 1882.

"Sealed proposals, in triplicate, addressed to the undersigned, will be received at this office until 12 o'clock, noon, on the 18th day of November, 1882, at which time and place they will be opened in the presence of bidders," etc. Signed, "Q. A. Gillmore, Lieut. Colonel of Engrs., Brevet Major-Gen. U. S. A."

Q. I show you three papers and ask you if they are from the files of the Engineer Office in Savannah?

A. Yes, sir.

Mr. Rose: The first paper just identified by the witness, is a letter dated,

"Nov. 14 2.

"Sir:

I inclose herewith copy of an advertisement dated Nov. 18, 1882, inviting proposals for Improving Savannah River above

Augusta, Ga., and respectfully request authority to publish the same in the following named official newspapers.

6 insertions in the Savannah, Ga., Morning News;
6 " " Atlanta, Ga., Republican;
6 " " New York, N. Y., Times.

A copy of specifications for the work is also inclosed, and authority to have 250 copies printed is respectfully requested.

Very respectfully your obedient servant,
Q. A. GILLMORE,
Lt. Col. of Engrs., Brevet Major-Gen. U. S. A."

Q. That signature is in the handwriting of Gen. Gillmore, is it not?

1121 A. Yes, sir.

Mr. Rose: The second paper identified by the witness is as follows:

"Advertisement.
United States Engineer Office,
Army Building, New York, Nov. 18, 1882.

"Sealed proposals, in triplicate, addressed to the undersigned, will be received at this office until 12 o'clock, noon, on the 9th day of December, 1882, at which place and time they will be opened in the presence of bidders, for removing rock and other obstructions, and building Wing Dams in the Savannah River, above Augusta, Ga."

That is all I care to read. The rest of it is in relation to the specifications,—where they may be obtained. Signed, "Q. A. Gillmore, Lieut. Colonel of Engineers, Brevet Major-Gen. U. S. A."

The third paper identified by the witness, bears the following indorsement: "Articles of Agreement entered into Jan. 5, 1883, between Capt. James C. Post, Corps of Engineers, of the One Part, and William H. Browne, of Brooklyn, N. Y., of the Other Part, for Improving Savannah River, above Augusta, Ga."

The advertisement preceeding the specifications is as follows:

"Advertisement.
United States Engineer Office,
Army Building, New York, Nov. 18, 1882.

"Sealed proposals, in triplicate, addressed to the undersigned, will be received at this office, until 12 o'clock, noon, on the 9th, day of Dec. 1882, at which time and place they will

be opened in the presence of bidders, for Removing rock and other obstructions, and Building Wing Dams in the Savannah River, above Augusta, Ga." * * *

1122 Signed "Q. A. GILLMORE,
Lieut. Col. of Engineers,
Brevet Major.-Gen. U. S. A."

Q. I show you four papers, three fastened together and one other one, and ask if they are from the files of the Engineer Office?

A. Yes, sir.

Mr. Rose: The first one is a letterpress copy of a letter, as follows:

"Jan. 11, 1883.

"Brig. Gen. H. G. Wright,
Chief of Engineers, U. S. A.
Washington, D. C.

General:

I have the honor to transmit herewith copy of an advertisement inviting proposals for the improvement of the Altamaha River, Ga., and a draft of the specifications for the work.

I have to request that, if approved, they may be forwarded to the Chief Clerk of the War Department, with the accompanying letter addressed to him.

Very respectfully, your obedient servant,

JAMES C. POST,
Capt. of Engineers, U. S. A.

(Three inclosures)"

The next paper identified by the witness is a letterpress copy as follows:

"Jan. 11, 1883.

Sir:

I have the honor to inclose herewith a copy of an advertisement inviting proposals for Improving the Altamaha
1123 River, Ga., and respectfully request authority to publish the same in the following named official newspapers, viz:"

I don't care to read the newspapers to fill up the record. There are five of them in New York, Philadelphia, Baltimore, Charleston and Savannah.

"A draft of specifications for the work is also inclosed, and authority to have 250 copies printed is respectfully requested.

"It is desirable that the proposals should be opened not later than the 7th ult.

Very respectfully,
Your obedient servant,

JAMES C. POST,
Captain of Engrs. U. S. A."

"To the Chief Clerk,
War Department, Washington, D. C.
"Through the Chief of Engineers U. S. A.
"(Two Enclo.)"

The other paper identified by the witness is endorsed,

"Articles of Agreement entered into March 19, 1883, between Capt. J. C. Post, Corps of Engineers, of the one part, and Robert L. Burnett, of Savannah, Ga., of the other part, for Improving Altamaha River, Ga."

The advertisement is as follows:

"Advertisement.
United States Engineer Office,
Army Building, New York, Jan. 15, 1883.

"Sealed proposals, in triplicate, addressed to the undersigned, will be received at this office until 12 o'clock, noon on the 7th, day of February, 1883, at which time and place they will be opened in the presence of bidders, for Removing Rock and Building Wing Dams in the Altamaha River, Ga."

Signed "JAMES C. POST,
Capt. of Engineers, U. S. A."

1124 A Member: Is the amount of those contracts there?

Mr. Rose: In the contract with Eli T. Bangs of Dec. 20, 1882—

A member: Give us the proposal date, that will give it to us.

Mr. Rose: I haven't the proposals here. I am only going to state from the specifications the quantity of work required. This (contract of Dec. 20, 1882 with Eli T. Bangs referred to) is one in which the advertisement is dated the 4th, of Nov.; the bids were to be opened on the 18th, of Nov. (Reading)

"It is estimated that under these specifications from 120,000 to 140,000 square yards of mattress work, and from 15,000 to 20,000 cubic yards of stone, will be required."

Then it also states that "the attention of bidders is especially invited to these two conditions, and no bid will be entertained which does not promise to do at least $20,000

worth of work a month, beginning with the 9th, of Dec. next."

The bond required of the contractor is for $80,000, with two sureties.

In the contract which was introduced, and which I read, dated Nov. 26, 1881, with A. M. Newton of New York City, in which the advertisement is dated Oct. 11, 1881, and was begun on the first of Nov., it is stated that the sum of $100,000 has been appropriated for this work.

In the two contracts the one with Robert S. Burnett, of March 19, 1883, and the other with William H. Browne of Jan. 5, 1883; the advertisement in the Burnett contract is dated Jan. 15, 1883 and bids are to be opened on the 7th, day of Feb. 1883. It is stated that the sum of $15,000 has been appropriated by Congress for this work. In the Browne contract the advertisement is dated Nov. 18, 1882, bids to be opened on the 9th day of December 1882, and it is stated that the sum of $15,000 was appropriated by Congress 1125 for this work with which it is proposed to continue the work.

Q. I show you a paper and ask you if you identify that as being from the records of the Engineer Office?

A. Yes, sir; it is.

Judge Advocate: All the papers that have been read from and which you have there are admitted to be from the Engineer Office in this city, and will be considered as having been identified by the witness.

Mr. Rose: I would like to put upon the record, the Regulations of 1881. I read from the U. S. Army Regulations, dated 1881, page 142. paragraph 1459:

"Officers in advertising sales of property, or for proposals for contracts, or for proposals for supplies, will, as a general rule, allow thirty days to intervene between the date of the first publication of the advertisement and the date designated in such advertisement for the sale to take place or for the opening of bids; but a shorter period than thirty days may be designated if the interests of the service, as reported by the officer advertising, should render it advisable."

Judge-Advocate: May I ask you, at the same time, to read another paragraph, as they go quite together. Will you please read paragraph 1486.

Mr. Rose: At the request of the Judge-Advocate, I read from page 150, paragraph 1486:

"When the public exigencies do not require the immediate

delivery of supplies, or the immediate furnishing of transportation or other services, advertisements shall be published for a reasonable time to allow persons at a distance to compete, and a proper time, to be set forth in the advertisement, will be given the successful bidder to make deliveries or to furnish the supplies, transportation, or services after the award."

And I call the attention of the Court and the Judge-Advocate to the fact that nothing is said there with refer-
1126 ence to entering into contracts.

I read from paper indorsed, "Articles of Agreement, entered into Jan. 30, 1880, between Lieut Col. Q. A. Gillmore, Corps of Engrs., of the one part, and John Brady, of Brooklyn, N. Y., of the other part, for Constructing a Crib Jetty in the harbor at Brunswick, Ga."

The advertisement preceeding the specifications is as follows:

"Advertisement.
United States Engineer Office,
Army Building, New York, Dec. 30, 1879.

Sealed proposals, in duplicate, addressed to the undersigned, will be received at this office until 12 o'clock noon, on the 12th day of January, 1880, at which time and place they will be opened in the presence of bidders," etc.

Signed, "Q. A. GILLMORE,
Lieut. Col, of Engineers,
Brevert Major-Gen. U. S. A."

And the specifications state that about $12,000 is available for this crib work.

I read from Articles of Agreement entered into Sept. 4, 1880, between Lieut. Col. Q. A. Gillmore, of the one part, and Lara, Ross & Co. of Washington, D. C. of the other part, for Constructing jetties at the entrance to Cumberland Sound, between Georgia and Florida. The advertisement is as follows:

"Advertisement.
United States Engineer Office,
Army Building New York, Aug. 3, 1880.

"Sealed proposals in duplicate, addressed to the undersigned will be received at this office until 12 o'clock, noon, on the 31st day of August, 1880, at which time and place they will be opened in the presence of bidders."

Signed. "Q. A. GILLMORE,
Lieut. Col. Engrs.
Brever Maj.-Gen. U. S. A."

1127 The Court: What is the date of application for authority to advertise?

Mr. Rose: I haven't that letter here. We have not been able to get that, but it must be prior to the date of this advertisement,—must be the same date or prior.

I don't find the amount to be expended under this contract stated in it. The only evidence as to the size of the contract is that a bond of $10,000 is required.

I read from paper indorsed, "Articles of Agreement, entered into Nov. 26, 1880, between Lieut. Col. Q. A. Gillmore, Corps of Engineers, of the one part, and Anderson & Blaisdell of Boston, Mass., of the other part, for Improving Savannah River, above Augusta, Ga." The advertisement is dated "Army Building, New York, Oct. 26, 1880, and bids are to be opened Nov. 15, 1880. It is signed Q. A. Gillmore, Lieut. Col. Engineers, Brevet Major-Gen. U. S. A. $16,000 was appropriated by Act of Congress for this work.

I read from paper, indorsed, "Articles of Agreement entered into Sept. 25, 1882, between Lieut. Col. Q. A. Gillmore, Corps of Engineers, U. S. A., of the one part, and Lara & Ross, of Staunton, Va., of the other part, for Constructing Jetties at Cumberland Sound, Ga., and Fla." The advertisement is dated, Army Building, New York, Aug. 12, 1882, bids to be opened on the 28th. of Aug., 1882. The amount of money available is not stated. The quantity of work is from 15.000 to 20,000 square yards of mattress work and from 8,000 to 10,000 cubic yards of stone. $10,000 worth of work per month is required to be done, and the contractor's bond is $20,000.

I read from Articles of Agreement, of Sept. 27, 1884, between Col. Gillmore of the one part, and Lara & Ross of Staunton, Va., of the other part, for Constructing Jetties in
1128 Cumberland Sound, Georgia and Florida. The advertisement is dated, Army Building New York, Aug. 16, 1884, and the bids are to be opened on the 11th day of September. It is signed by Q. A. Gillmore, Col. of Engineers, Brevet Major-Gen. U. S. A. 20,000 to 30,000 square yards of mattress work and 10,000 to 12,000 cubic yards of stone. $7,500 worth of work is required per month. Contractor's bond, $30,000.

I read from Articles of Agreement of July 22, 1880, between Lieut. Col. Q. A. Gillmore, Corps of Engrs., of the one part, and John G. Smith, of Charleston, S. C., of the other part, for removing a portion of a dry dock from St. Augustine Creek,

Ga. The advertisement is dated Army Building, New York, June 7, 1880, and the bids are to be opened on the 30th, of June, 1880.

I read from Articles of Agreement of June 2, 1882, between Lieut. Col. Q. A. Gillmore, Corps of Engineers of the one part and Dickerson & Paulsen of the other part, for Dredging in Savannah River, Ga. This advertisement is dated, United States Engineer Office, Army Building, New York, May 13, 1882, to be opened on the 25th day of May, 1882, and is an advertisement for the dredging of 35,000 cubic yards more or less, in the vicinity of Garden Bank, Savannah River.

I read from Articles of Agreement entered into Dec. 30, 1882, between James C. Post, Corps of Engineers of the one part, and Dickerson & Paulsen, of Savannah, Ga., of the other part, for dredging in Savannah river, Ga. The advertisement is dated Army Building, New York, Nov., 1882, bids to be opened on the 11th day of Nov., 1882, signed, Q. A. Gillmore, Lieut. Col. of Engineers, Brevet Major Gen. U. S. A. About 200,000 cubic yards, more or less, of material will be removed. The amount of the bond is $10,000.

The Court: You do not give the amount of the one of Jan. 30, 1880?

1129 Mr. Rose: It does not state in the contract the amount. The bids however, indicate the amount of work to be done. There seems to be attached a list of proposals which run from $3,000 to $4,950.

I read from Articles of Agreement entered into March 28, 1883, between Capt. James C. Post, Corps of Engineers, U. S. A. of the one part, and Dickerson & Paulsen of the other part, for Dredging in Romaly Marsh, Ga. The advertisement is dated Army Building, New York, Feb. 8, 1883; bids to be opened on the 26th of Feb., 1883, and is signed, James C. Post, Capt. of Engineers, U. S. A. It states that there is about 70,000 cubic, more or less of material to be removed. The bond is in the sum of $5,000.

I read from Articles of Agreement entered into Nov. 26, 1884, between Lieut. Col. Q. A. Gillmore, Corps of Engineers, and P. Sanford Ross, for dredging in Savannah Harbor and River, Ga. The advertisement is dated, Army Building, New York, Nov. 3, 1884; bids to be opened on the 17th, of Nov., 1884, and is signed, Q. A. Gillmore, Col. of Engineers, Brevet Major-Gen. U. S. A. Material to be removed from 90,000 to 150,000 cubic yards. Bond, $10,000.

I read from Articles of Agreement, entered into Nov. 26, 1884, between Col. Q. A. Gillmore, Corps of Engineers, and B. Sanford Ross of Jersey City, N. J., for Dredging in Romaly Marsh, Ga. The advertisement is dated Nov. 3, 1884, bids to be opened on the 17th of Nov., 1884, and is signed Q. A. Gillmore, Col. of Engineers, Brevet Major-Gen. U. S. Q. and says, the sum of $10,000 is available for this work.

I read from contract entered into October 20, 1880, between Lieut. Col. Q. A. Gillmore, Corps of Engineers, and the American Dredging Company, for dredging in Savannah River, Ga. The advertisement is dated Army Building New York, Sept. 11, 1880, bids to be opened Oct. 2, 1880, and is signed, 1130 Q. A. Gillmore, Lieut. Col. Engineers, Brevet Major-Gen. U. S. A. From 200,000 to 300,000 cubic yards of material was to be removed. Bond in the sum of $10,000.

I read from contract entered into July 16, 1881, between Lieut. Q. A. Gillmore Corps of Engineers, and James E. Walter, of Savannah, Ga., for dredging in Brnswitk Harbor, Ga. The advertisement is dated Army Building, New York, Aug. 18, 1880, bids to be opened Sept. 7, 1880, and is signed Q. A. Gillmore, Lieut. Col. Engineers, Brevet Major Gen. U. S. A. It says it is the intention to devote about $5,000 of the existing appropriation to this work. The bond is $1,000.

I read from Articles of Agreement entered into Sept. 30, 1880, between Capt. James C. Post, Corps of Engineers, and Dickerson & Paulsen, for dredging in Savannah River, Ga. The advertisement is dated, Army Building, New York, Nov. 1, 1882; bids to be opened Nov. 11, 1882, and states that about 200,000 cubic yards of material are to be removed, and is signed Q. A. Gillmore, Lieut. Col. of Engineers, Brevet Major Gen., U. S. A. The bond is for $10,000.

I read from Articles of Agreement entered into March 28, 1883, between Capt. James C. Post, Corps of Engineers, U. S. A. and Dickerson & Paulsen, for dredging in Romaly Marsh, Ga. The advertisement is dated Army Building, New York, Feb. 8, 1883; bids to be opened Feb. 26, 1883. About 70,000 cubic yards more or less, of material to be removed. Signed James C. Post, Captain of Engineers, U. S. A.

I read from Articles of Agreement entered into Sept. 24, 1884, between Lieut. Col. Q. A. Gillmore, Col. of Engineers, and John S. Howell, of New York City, for constructing jetty in harbor of Brnswick. The advertisement is dated Aug. 16, 1884. Bids to be opened Sept. 11, 1884, and is signed Q. A.

Gillmore, Colonel of Engineers, Brevet Major Gen. U. S.
1131 A. The bond is for $5,000. 1,200 to 1,400 square yards of mattress work, and from 1,900 to 2,000 cubic yards of stone work.

The Court: The Court will take a recess of five minutes. (At 1:30 Court took a recess and was called to order at 1:35).

Mr. Rose: I read from Articles of Agreement entered into Oct. 30, 1896, between Col. Q. A. Gillmore, U. S. A., and the Savannah Dredging Company, for dredging in Brunswick Harbor, Ga. The advertisement is dated, Army Building, New York, Sept. 11, 1886, bids to be opened Sept. 30, 1886, and is signed Q. A. Gillmore, Colonel of Engineers, Brevet Major-Gen. U. S. A. From $8,000 to $11,000 of the existing appropriation is to be devoted to this work.

I read from Articles of Agreement entered into Sept. 1, 1884, between Col. Q. A. Gillmore, Corps of Engineers, U. S. A., and John F. Gaynor, of Syracuse, N. Y., for Constructing Training Walls and Wing Dams, in Savannah Harbor and River, Ga. The advertisement is dated, Army Building, New York, July 26, 1884; bids to be opened Aug. 16, 1884, and is signed Q. A. Gillmore, Colonel of Engineers, Brevet Major-Gen. U. S. A. The amount is 120,000 to 125,000 square yards of mattress work, and from 18,000 to 20,000 cubic yards of stone work. $16,000 worth of work per month is required, and bond in the sum of $80,000.

I read from Articles of Agreement entered into Dec. 5, 1884, between Col. Q. A. Gillmore, Corps of Engineers, and Edward H. Gaynor of Savannah, Ga., for Constructing Wing Dams, &c. in Savannah River, Ga. The advertisement is dated Army Building, New York, Sept. 18, 1884, bids to be opened October 17, 1884, and is signed Q. A. Gillmore, Colonel of Engineers, Brevet Major Gen. U. S. A. It is stated that it is expected that from $9,000 to $10,000 will be available for it. The bond is for $6,000.

1132 I read from contract, dated Dec. 5, 1884, between Col. Q. A. Gillmore, Corps of Engineers, and Edward H. Gaynor, of Savannah, Ga., for Constructing Wing Dams, &c., in Altamaha River, Ga. The advertisement is dated Army Building, New York, Sept. 18, 1884; bids to be opened Oct. 17, 1884, and is signed Q. A. Gillmore, Colonel of Engineers, Brevet Major-Gen. U. S. A. From $7,000 to $8,000 is available for this work.

Contract, dated October 28, 1886, between Col. Q. A. Gill-

more, Corps of Engineers, and John F. Gaynor, for dredging in Savannah river, Ga. The advertisement is dated, Sept. 11, 1886; bids to be opened on the 30th of Sept., 1886, and is signed Q. A. Gillmore, Lieut. Colonel of Engineers, Brevet Major-Gen. U. S. A. Amount of work to be 125,000 to 150,000 cubic yards; contractor's bond $20,000.

I read from Articles of Agreement entered into June 22, 1885, between Col. Q. A. Gillmore, Corps of Engineers and Edward H. Gaynor, of Fayetteville, N. Y., for Constructing Spur Jetty, at Tybee Island, Ga. The advertisement is dated May 20, 1885, bids to be opened June 11, 1885; contractor's bond $1,000.

Articles of Agreement, entered into Oct. 30, 1886, between Col. Q. A. Gillmore, U. S. A., and Edward H. Gaynor, of Boston, Mass., for Constructing a Jetty in Brunswick Harbor, Ga. The advertisement is dated Sept. 11, 1886; bids to be opened Sept. 30, 1886, and is signed Q. A. Gillmore, Colonel of Engineers, Brevet Major-Gen. U. S. A. Required from 2,500 to 3,500 square yards of mattress work, and from 2,000 to 2,500 cubic yards of stone. The bond is for $5,000.

Contract, dated Oct. 29, 1886, between Col. Q. A. Gillmore, Corps of Engineers, and Anson M. Bangs, for Construction of Jetties at Cumberland Sound, Georgia and Florida. The advertisement is dated Sept. 11, 1886; bids to be opened Sept. 30, 1886, and is signed Q. A. Gillmore, Colonel of Engi-
1133 neers, Brevet Major-Gen. U. S. A. Estimated that from 60,000 to 70,000 square yards of mattress work and from 25,000 cubic yards of stone will be required. Contractor promises to do $12,000 worth of work per month and $50,000 is the amount of the bonds.

(Addressing the Judge Advocate) Does the agreement as to papers from your office, cover these three books?

Judge Advocate: Certainly; anything that Capt. Carter receipted to me for.

Mr. Rose: I read from the files of the Engineer Office, Book, indorsed "Charleston Office, Savannah Harbor, June 1881-Dec., 1882." at page 403, letterpress copy book, as follows:—

"U. S. Engineer Office,
Charleston, S. C., Oct. 30, 1882.

"Mr. R. S. Burnett,
Savannah, Ga.

As requested in your letter of 27th inst, I beg to send you

herewith a copy of specifications for work of improvement of Savannah River, below Augusta, Ga.

Very respectfully,
Your obedient servant,
JAMES C. POST,
Captain Engineers, U. S. A."

Page 406,

"United States Engineer Office,
Charleston, S. C., Nov. 2, 1882.

"Mr. William F. Bowe,
No. 104 Bay St., Savannah, Ga.
Dear Sir:—

Herewith inclosed, I beg to send you copy of specifications for the building of Wing Dams in Savannah River, Ga., below Augusta, dated New York, Oct. 13, 1882.

I also inclose diagram showing end of view of fascine 1134 wing dam.

Very respectfully,
Your obedient servant,
JAMES C. POST,
Capt. Engrs. U. S. A."

A member: Can you tell us when those bids were to be opened?

Mr. Rose: I may be able to do it later on, but cannot do it now. This one shows that the copy was sent on Nov. 2.

Page 407,

U. S. Engineer Office,
Charleston, S. C., Nov. 3, 1882.

"Mr. James E. Walter,
Savannah, Ga.
Dear Sir:—

As requested in your letter of the 2d, inst., I beg to forward you herewith in separate package the following blanks, &c., necessary to make a bid on the proposed work on Savannah river, Ga., below Augusta, viz—:

3 copies general instructions to bidders:
3 copies Specifications;
4 copies Proposals (1 extra)

I also inclose a diagram showing end view of a fascine Wing Dam.

Very respectfully,
Your obedient servant,
JAMES C. POST,
Captain of Engrs. U. S. A."

Page 433, U. S. Engineer Office,
Charleston, S. C. Dec. 4, 1882.

Mr. William F. Bowe,
104 Bay St., Savannah, Ga.

1135 "Dear Sir:—

Herewith I beg to send you in separate package, three copies of the specifications for thr work of improvement of Savannah river, above Augusta, Ga.; also three copies each of instructions to bidders and blank proposals.

"The specifications have just been received at this office.

Very respectfully,
Your obedient servant,
THOMAS N. BAILEY,
1st; Lieut. Engrs. U. S. A."

I read from letter book, marked, "Savannah," with large "A" on it in red ink, page 459.

"Sept. 5, 1884.

Col. James Atkins,
Savannah, Ga.

Sir:

By direction of Capt. Bailey, I have the honor to send you herewith, one copy each of Specifications, Cumberland Sound work; Specifications Brunswick Harbor, and two copies insttuctions to bidders (Form 182) as requested in your letter of 4th, inst.

"The bids for both of these works will be opened at Gen. Gilmore's office, Army Building New York City, at 12 m., Sept. 11, 1884, and bidders anre invited to be present.

Very respectfully,
Your obedient servant,
W. H. PORTER,"

Page 488,

"October 2, 1884.

"Mr. Frank Blaisdell,
Augusta, Ga.

1136 Sir:—

By direction of Capt. Bailey, I beg to send you herewith, one copy each of the following specifications, viz:

Improvement of Savannah River, below Augusta, Ga.,
" " Altamaha River, Ga.

Very respectfully,
Your obedient servant,
W. H. PORTER,

. (2 inclosures)"

Page 490,

"Oct. 2, 1884.

"Mr. Rittenhouse Moore,
Mobile, Ala.
Sir:

At request of Mr. C. H. Elwell, and by direction of Capt. Bailey, Corps of Engineers, U. S. A., I beg to send herewith, one copy each of the following Specifications, 1884, viz:

Improvement Romerly Marsh, Ga.,
" Savannah River, below Augusta, Ga.
" Savannah Harbor and River, Ga.,—dredging;
" Altalaha River, Ga.

Very respectfully,
Your obedient servant,
(4 inclosures)" W. H. PORTER.

Page 491.

"Oct. 2, 1884.

"Mr. James Atkins,
Savannah, Ga.
Sir:

By directions of Capt. Bailey, I beg to send you herewith one copy each of the following Specifications, 1884, viz:

1137 Improvement of Savannah River, below Augusta, Ga.,
" of Altamaha River, Ga.,.

Very respectfully,
Your obedient servant,
(2 inclosures.)" W. H. PORTER.

Page 492.

"October 2, 1884.

"Mr. Jacob Paulsen,
Savannah, Ga.
Sir:

In response to your request of 28th, ult., and by direction of Capt. Bailey, I beg to send you herewith three copies each of Specifications, 1884, for dredging in Savannah Harbor and River, Ga., and at Romerly Marsh, Ga.; also the following blanks,

6 proposals (Form 18)
6 Instructions to Bidders (Form 182)

Very respectfully,
Your obedient servant,
W. H. PORTER,
(18 inclosures)"

Page 499

"October 3, 1884.

Mr. James Atkins,
Savannah, Ga.

Sir:

In response to your request of 2d, inst., and by direction of Capt. Bailey, I beg to send herewith three copies each of the following specifications,—1884.

Improving Savannah River, below Augusta, Ga.;
" Altamaha River, Ga.;

One copy of each of above was forwarded to you last night.

I also send herewith,

1138 8 copies Proposals (Form 18)
8 copies Instuctions to Bidders (Form 182)

Very respectfully,
Your obedient servant,
W. H. PORTER.

I read from book on outside cover of which is, "Savannah Harbor B," page 286.

""Sept. 22, 1886

"Mr. R. G. Ross,
Wilmington, N. C.

Sir:

There are sent to you by today's mail, a complete set of Specifications, Forms of Proposals and General Instructions to Bidders for the construction of jetties in Cumberland Sound, Georgia and Florida. One copy each of Specifications rlating to dredging at Savannah and Brunswick, Ga., and to the construction of Wing Dams, &c., at these places are also forwarded.

If you desire to bid, additional copies, forms, &c., will be sent to you upon application.

Very respectfully,
Your obedient servant,
O. M. CARTER,
1st, Lieut. Corps of Engineers, U. S. A."

Page 287.

"Sept. 22, 1886.

"Mr. J. E. Sudler,
Assistant Engineer, Harbor Board,
Baltimore, Md.

Sir:

There are sent to you, by today's mail, one copy Specifica-

tions, relating to the construction of Training Walls and Wing Dams in Savannah Harbor and River, Ga.; One copy specifications relating to the construction of jetties at 1139 Cumberland Georgia and Florida.

If you desire to bid, additional copies of these specifications, blank forms of proposals, and general instructions to bidders will be sent you upon application.

Very respectfully,
Your obedient servant,
O. M. CARTER,
1st, Lieut. Corps of Engrs. U. S. A.

(2 inclosures)"

Q. Mr. Sterly, in 1886, Gen. Gilmore was in charge of Savannah District?

A. Yes, sir.

Mr. Rose: Page 288.

"Sept. 22, 1886.

"Messrs. John Lyons & Son,
Baltimore, Md.

Sirs:

There are sent to you by today's mail,

1 copy Specifications relating to the construction of Training Walls and Wing Dams in Savannah Harbor and River, Ga.,

1 copy Specifications relating to the construction of jetties at Cumberland Sound, Ga., and Fla.

If you desire to bid, additional copies of these Specifications, blank forms of proposals, and general instructions to bidders will be sent to you upon application.

Very respectfully,
Your obedient servant,
O. M. CARTER,
1st, Lieut. Corps of Engrs U. S. A.

Page 289.

"Sept. 22, 1886.

"Mr. J. H. Coster,
650 W. Lombard St., Baltimore Md.

Sir

There are sent to you by today's mail, complete sets of 1140 of specifications, forms of proposals, and general instructions to bidders for the construction of Wing Dams

and Training Walls in Savannah Harbor and River; jetties at Cumberland Sound, Ga., and Fla., and jetty at Brunswick.

Very respectfully,
Your obedient servant,
O. M. CARTER,
1st Lieut. Corps of Engrs. U. S. A."

Page 290.

"Sept. 22, 1886.

"Messrs. R. Moore & Co.,
Mobile, Ala.

Sirs:

There are sent to you by today's mail,

1 copy Specifications, relating to the construction of Training Walls and Eing Dams in Savannah Harbor and River, Ga.;

1 copy, specifications relating to dredging in Savannah River, Ga.

1 copy, specifications, relating to the construction of jetties at Cumberland Sound, Ga., and Fla.;

1 copy, specifications, relating to the construction of a Jetty in the Harbor of Brunswick;

1 copy, specifications relating to dredging in Brunswick Harbor, Ga.

If you desire to bid, additional copies of these specifications, blank forms of proposals and general instructions to bidders will be sent to you upon application.

Very respectfully,
Your obedient servant,
O. M. CARTER,
1st Lieut. Corps of Engrs. U. S. A."

Page 294.

Sept. 25, 1886.

Messrs. French Bros.

Rocky Point, Pender Co. N. C.

1141 Sirs:

There are sent to you by today's mail:

1 copy, spedifications, relating to the construction of Training Walls and Wing Dams in Savannah Harbor and River, Ga.,

1 copy, specifications, relating to the construction of Jetties at Cumberland Sound, Ga., and Fla;

1 copy, specifications, relating to the construction of a Jetty in the Harbor of Brunswick.

If you desire to bid, additional copies of these specifications, blank forms of proposals and general instructions to bidders will be sent to you upon application.

Very respectfully,
Your obedient servant,
O. M. CARTER,
1st, Lieut. Corps of Engrs. U. S. A."

Q. (Examination continued) Do you know when Capt. Carter first came to Savannah?

A. Yes, sir.

Q. When?

A. In August 1884; I know it from the records.

Q. Was it the 14th, of October, 1884?

A. That I don't know.

Q. Then you don't know when he came here?

A. I know that Capt. Carter came here in the fall or in the summer of 1884,—first to Charleston and then to Savannah.

Q. And who was then in charge of the Savannah District, —of works being done in this District?

A. Gen. Gillmore.

Q. He was in charge over Capt. Carter?

A. Gen. Gillmore was in charge over Capt. Carter.

Q. Directly?

A. Not when he came here first. When Capt. Carter
1142 came here first, he was under the direct charge of Capt. Bailey.

Q. And Capt. Bailey was preceded by Capt. Post?

A. Yes, sir.

Q. How long did Capt. Bailey stay here?

A. I don't know.

Q. When he went away Capt. Carter took his place?

A. Capt. Carter I think relieved him.

Q. Capt. Carter relieved Capt. Bailey and Gen. Gillmore?

A. Yes, sir; the District was divided and there were two Districts made.

Judge Advocate That can all be shown by orders.

Mr. Rose: I don't want to take up time if this witness can just state the fact that is all.

Q. (Mr. Rose continuing examination) In referring to the paper, you have prepared, this morning, the Judge Advocate asked you how many brush mats were to be used; you meant by that, did you not, the amount stated there of brush mats, by which the bids were to be canvassed?

A. Bids to be canvassed,—which the contractors expected to use.

Q. The amounts stated in the specifications are the amounts by which the bids are to be canvassed, are they not?
A. The amount in the specification is,— The following quantities will be used for canvassing bids, and gives the contractor.
Q. I see it gives the contractor. The statement is, that the following amounts will be used for the purpose of canvassing bids?
A. That is right.
Q. (Handing witness paper) For instance,—read that.
A. (Reading) "For the purpose of canvassing bids, the following will be assumed as the approximate quantities of material, towit:—"
Q. And then proceeds to state the amounts?
1143 A. Yes, sir.
Q. And that sentence ends with this statement: "But the foregoing quantities are liable to be increased or diminished as may be found necessary"?
A. Yes, sir.

Re-direct Examination by the Judge-Advocate.

Q. Was B. D. Green a subordinate of Gen. Gillmore?
A. Yes, sir.
Q. He was on duty in this engineering district under him?
A. Yes, sir.
Q. Gen. Gilmore's office was in New York, was it not?
A. Yes, sir.
Q. Did he frequently come to Savannah?
A. I don't know; I wasn't here at the time.
Q. After you came here, did he frequently visit Savannah?
A. Capt. Green?
Q. No; Gen'l Gilmore?
A. No, sir; Gen. Gilmore was sick at that time.
Q. Do you know when Gen. Gilmore died?
A. Yes, sir.
Q. What date was it?
A. On the 7th of April, 1888.
Q. Capt. Post is dead, is he not?
A. Yes, sir.
Q. Is Capt. Bailey living?
A. He is dead.
Q. How long was Gen. Gilmore an invalid, do you know?
A. He was an invalid for several years, and died of Brights disease.

1144 Q. You were asked by Counsel in relation to the reports of the accused,—the annual report to the Chief of Engineers; did any of the reports of the accused, at any time, show that any modification of any existing contracts had been authorized? Do the records of the office give that information, do you know?

A. Do I understand the question right—?

Q. Was there in the reports of the accused to the Chief of Engineers anything that showed that, at any time, authority had been given to modify contracts that had been in process of execution during the year or during the period covered by the report? Well, let that go; it may tax your memory too much.

Q. In any of his reports, has he reported any modification of existing contracts in this Engineering District?

A. Yes, sir.

Q. Which one?

A. Capt. Carter has reported,—submitted projects of modification for Savannah Harbor and Cumberland Sound contracts.

Q. Since the present contracts were let?

A. Not that I remember.

Q. Has any authority to modify the contracts of 1896 been received at the office here in Savannah?

A. For Cumberland Sound it has.

Q. What change has been authorized?

A. There was a sailing that was made over the jetty,—South Jetty, Cumberland Sound.

Q. You can produce that paper, can you?

A. That is an appropriation of $50.000, and a special appropriation was made for Cumberland Sound.

1145 Q. That wasn't a modification of existing contract?

A. No, sir; I am mistaken.

Q. Did you find any authority, or request for authority, for modification of the project of the Board of Engineers of December, 1895, for improvements in these waters?

A. I don't remember.

Q. Have you looked?

A. I have not looked lately.

Q. As Chief Clerk of the office, would you know if such modification had been made? Would it not come to you for record?

A. I would see the papers, but I have been so busy during the last few months, and previous,—before Capt. Carter went away, that sometimes papers were filed, and I did not have a chance to study them.

Q. You were busy before Capt. Carter went away?
A. Yes, sir.
Q. What was occupying your time?
A. My regular routine work at the office.
Q. Busier than usual?
A. Not busier than usual, but I have always been very busy, and some of those papers for the contract work, I could not testify to without refreshing my memory.
Q. I will ask you to make a diligent and thorough search of the records of the office, to find if anv authority has ever been granted Capt. Carter, or was ever asked for by him, to modify the project of the Board of Engineers of December, 1895; you will look for that, will you?
A. Yes, sir.
1146 Q. Do you know if there has been any variation in the terms of agreement as to money paid by the government to contractors under existing contracts? Whether there has been any variation in the prices of mattress and for stone prior to July 31st last?
A. No, sir; the prices are the same as on the contract.
Judge-Advocate: I find, may it please the Court, that there was some further information in those papers submitted by Mr. Rose that I think it well should be spread upon the record, and I read first from the Articles of Agreement between Col. Gillmore and Anson M. Bangs for the Construction of Jetties at Cumberland Sound, Georgia and Florida. The work had in contemplation, and the advertisement called for bids upon, either of the following two designs of mattress, to be used at the option of the contractor:
"First Design.—This mattress is a raft of round logs, not less than 12 inches in average diameter, and not less than 9 inches in diameter at the small end, placed in close contact, side by side, and firmly held by transverse pole binders spiked or bolted to them. There will be placed upon the raft of logs a layer of live wood brush sufficient to give five inches in thickness in the finished work, secured in place by poles lashed to the binders of the raft.
"The binders will be smaller logs or poles, not less than 5 inches in diameter at the small end, and placed not more than eight feet apart, and those on the outside will be close to the ends of the logs.
"Second Design.—This mattress will consist of a bottom grillage of poles, of an average diameter of at least 6 in-
1147 ches, and not less than 5 inches in diameter at the small end, placed from 4 to 6 feet apart between centers, both longitudinally and transversely, and the lower poles will be

parallel to the line of the jetty. The spaces between the upper poles of this bottom grillage will be filled in with smaller poles. Upon this raft will be placed two layers of stout, hard-wood, brush, crossing each other at right-angles, each course to be five inches thick in the finished jetty, to be followed by a top grillage constructed like the one placed at the bottom. The upper layer of brush will be placed at right angles to the line of the jetty. The poles of each grillage will be securely lashed together by suitable wire or rope lashings, and the upper and lower grillages will also be securely lashed together, in such manner as the Engineer in charge shall approve, so as to form a strong and compact mattress, not less than 16 inches thick in the finished work, the thickness being estimated between the bottom poles of the upper and the top poles of the lower grillage.

"The logs and poles may be loblolly or other cheap variety of pine, and must be of gentle taper and sufficiently straight. Logs will not be used that do not fit close enough together to hold all the stone securely even without the use of brush."

The contract price for the mattress in that contract was 47¢ per square yard.

I read from Articles of Agreement between Col. Gillmore and Edwd. H. Gaynor, dated Oct. 30, 1886, for Constructing a Jetty in Brunswick Harbor, Ga. Sept. 11, 1886, is the date of the advertisement; bids opened Sept. 30, 1886. (Reading)

"Details of Construction.

"This mattress is a raft of round logs, not less than 12 inches in average diameter, and not less than 9 inches in 1148 diameter at the small end, placed in close contact side by side, and firmly held by transverse pole binders spiked or bolted to them. There will be placed upon the raft of logs a layer of live-wood brush sufficient to give five inches in thickness in the finished work, secured in place by poles lashed to the binders of the raft.

"The binders will be smaller logs or poles, not less than 5 inches in depth at the small end, and placed not more than 8 feet apart, and those on the outside will be close to the ends of the logs.

"The logs and poles used may be loblolly, or other cheap variety of pine, and must be of gentle taper and sufficiently straight. Logs will not be used that do not fit close enough together to hold all the stone securely, even without the use of brush."

The price paid, under which this contract was entered into was 55¢ per square yard.

I read from Articles of Agreement of December, 1882, be-

tween Capt. Jas. C. Post and Eli T. Bangs, Constructing Wing Dams &C., in Savannah Harbor and River, Ga. (Reading)

"The mattress is simply a raft of round logs, not less than 12 inches in average diameter, and not less than 9 inches in diameter at the small end, placed in close contact, side by side, at right-angles to the line of the wall or dam, and firmly held there by transverse pole-binders spiked or bolted to them."

Price of mattress under this contract, 57¢ per sq. yard.

I read from Articles of Agreement entered into Nov. 26, 1881, between Col. Gillmore and A. M. Newton for Constructing Jetties at Entrance to Cumberland Sound, Georgia and Florida. (Reading)

1149 "The mattress is simply a raft of round logs, not less than 12 inches in average diameter, and not less than 9 inches in diameter at the small end, placed in close contact, side by side, at right angles to the line of the jetty, and firmly held there by transverse pole-binders spiked or bolted to them.

"The binders will be smaller logs or poles, not less than 4 inches in depth at the small end, placed not more than 8 feet apart, and those on the outside will be close to the ends of the logs."

The price for mattresses bid, on which that contract was entered into was 97¢ per sq. yard, and live hard-wood, brush 8¢ per sq. yard.

Mr. Blair: How thick was the brush to be by the specifications

Judge-Advocate: (reading) "A layer of live, hard-wood, brush 9 feet wide and 6 inches thick in the finished work, firmly held down by two pole-binders, will, at the option of the Engineer in charge, be placed on the opposite edges of the mattress, and will extend about one foot beyond the ends of the logs."

Mr. Rose: Will you be kind enough to read that which is written, and state that it is written in?

Judge-Advocate: (Reading) "Payments shall be made to the said A. M. Newton monthly if satisfactory progress is made in the work contracted for," etc.

Mr. Rose: That is Form 19a?

Judge-Advocate: Form 19a.

Mr. Rose: And that "If satisfactory progress is made," is written in and not printed?

Judge-Advocate: Written in and not printed.

1150 Mr. Rose: And the same is true of the one of Oct. 30th?

Judge-Advocate: The same in Mr. Gaynor's contract.

Mr. Rose: "If satisfactory progress is made is written in, and it is on Form 19a?

Judge-Advocate: Yes, sir; the same on Mr. Gaynor's contract.

I read from Articles of Agreement entered into between Col. Gillmore and Lara, Ross & Co., Sept. 27, 1884, for Constructing Jetties in Cumberland Sound, Ga. and Fla. (Reading)

"Either of the following two designs of mattress may be used at the option of the contractor.

"First Design.—This mattress is a raft of round logs, not less than 12 inches in average diameter, and not less than 9 inches in diameter at the small end, placed in close contact side by side, and firmly held by transverse pole-binders spiked or bolted to them. There will be placed upon the raft of logs a layer of live-wood brush sufficient to give five inches in thickness in the finished work, secured in place by poles lashed to the binders of the raft.

"The binders will be smaller logs or poles, not less than 5 inches in depth at the small end, and placed not more than 8 feet apart, and those on the outside will be close to the ends of the logs.

"Second Design.—This mattress will consist of a bottom grillage of poles, of an average diameter of at least six inches, and not less than five inches in diameter at the small end, placed from 4 to 6 feet apart between centers, both longitudinally and transversly, and the lower poles will be parallel to the line of the jetty. The spaces between the upper poles of this bottom grillage will be filled in with similar poles. Upon this raft will be placed two layers
1151 of stout hard-wood brush, crossing each other at right-angles, each course to be five inches thick in the finished jetty, to be followed by a top grillage, constructed like the one placed at the bottom. The upper layer of brush will be placed at right-angles to the line of the jetty. The poles of each grillage will be securely lashed together by suitable wire or rope lashings, and the upper and lower grillages will also be securely lashed together, in such manner as the Engineer in charge shall approve, so as to form a strong and compact mattress, not less than 16 inches thick in the finished work, the thickness being estimated between the bottom poles of the upper and the top poles of the lower grillage."

The price for mattresses in the contract is placed at 59¢ per square yard.

I read from Articles of Agreement entered into Sept. 25,

1882, between Col. Gillmore and Lara, Ross and Co., of Staunton, Va., for Constructing Jetties at Cumberland Sound, Georgia. (Reading)

"Either of the following two designs of mattress may be used at the option of the contractor.

"First Design.—This mattress is a raft of round logs, not less than 12 inches in average diameter, and not less than 9 inches in diameter at the small end, placed in close contact side by side, at right-angles to the line of the jetty, and firmly held there by transverse pole-binders spiked or bolted to them. There will be placed upon the raft of logs a layer of live wood brush sufficient to give five inches in thickness in the finished work, secured in place by poles lashed to the binders of the raft.

"The binders will be smaller logs or poles, not less than 4 inches in depth at the small end, and placed not more
1152 than 8 feet apart, and those on the outside will be close to the ends of the logs.

"Second Design.—This mattress will consist of a bottom grillage of poles, of an average diameter of at least six inches, and not less than five inches in diameter at the small end, placed from 4 to 6 feet apart between centers, both longitudinally and transversely, and the lower poles will be parallel to the line of the jetty. The spaces between the upper poles of this bottom grillage will be filled in with similar poles. Upon this raft will be placed two layers of stout, hard-wood brush, crossing each other at right-angles, each course to be five inches thick in the finished jetty, to be followed by a top grillage, constructed like the one placed at the bottom. The upper layer of brush will be placed at right-angles to the line of the jetty. The poles of each grillage will be securely lashed together by suitable wire or rope lashings, and the upper and lower grillages will also be securely lashed together, in such manner as the Engineer in charge shall approve, so as to form a strong and compact mattress, not less than 16 inches thick in the finished work, the thickness being estimated between the bottom poles of the upper and the top poles of the lower grillage."

The price to be paid for that mattress, under the terms of the contract, 85¢ per square yard.

I read from Articles of Agreement of Sept. 4, 1880, entered into between Lt. Col. Gillmore and Lara, Ross & Co., of Washington, D. C., for Constructing Jetties at the Entrance to Cumberland Sound, Ga. (Reading)

"The contractor will be allowed to choose between the three designs for the foundation mattress described below.

1153 "First Design.—This mattress is simply a raft or platform of round logs, not less than 12 inches in diameter, (nor less than 9 inches in diameter at the small end) placed close together, side by side, at right-angles to the line of the jetty, and firmly held there by transverse binders spiked or bolted to them.

"The binders will be smaller, logs, flattened on the lower side, and not less than 7 inches in depth at the small end, and the average depth through binder and log at the points of fastening will not be less than 19 inches. The binders will be placed not more than 8 feet apart, and those on the outside will be close to the ends of the logs. The spaces between the binders, except the two outside spaces, one on each side over the ends of the logs, will be filled with short logs, sawmill slabs, or other suitable material. This filling will be firmly held in place by pole binders, or by some other suitable method.

"Second Design.—This mattress will consist of the raft or platform secured by binders, as above described for the first design, the same to be overlaid with stout brush to an average depth of 7 inches, estimated in the finished work. The contractor will be allowed to make a layer of brush only four or five inches in average thickness, provided the sices of the logs are correspondingly increased, so as to produce a mattress not less than 19 inches thick in the finished work. The brush is to be closely compacted, and firmly and securely held in place, and will project in the thick mats three to four feet beyond the ends of the logs.

"The logs used for the mattress may be loblolly, or other cheap variety of pine. They must be of gentle taper, and as straight as can be procured, and those of as nearly the 1154 same size as possible will be selected to go together.

"Third Design.—This mattress wil consist of a bottom grillage of poles of an average diameter of not less than 6 inches, and not less than 5 inches in diameter at the small end, placed in each course not more than five feet apart between centers, and the lower poles will be parallel to the line of the jetty. The spaces between the upper poles of this bottom grillage will be filled in with similar poles, or with sawmill slabs, or with an equivalent of stout brush, at the option of the contractor. Upon this will be placed two layers of stout brush aggregating 13 inches in thickness in the finished jetty, to be followed by a top grillage constructed like the one at the bottom. The poles of each grillage will be securely lashed together at the points of crossing, and

the upper and lower grillages will be firmly connected together by similar lashings, in such maner as the Engineer in charge shall approve."

Price for the foundation mattress, first designed, covered with one foot of rip rap stone, $12.34 per lineal foot of a width of 54 feet; second design $12.49 per lineal foot of a width of 54 feet; third design $11.59 per lineal foot of a width of 54 feet.

I read from articles of agreement of Sept. 24th, 1884, between Col. Gillmore and John S. Howell, for constructing jetty in Brunswick Harbor, Georgia:

"This mattress is a raft of round logs not less than 9 inches in average diameter, and not less than 6 inches in diameter at the small end, placed in close contact side by side, and firmly held by transverse pole-binders spiked or bolted to them. There will be placed upon the raft of logs a layer of live wood brush, sufficient to give 5 inches in thick-
1155 ness in the finished work, secured in place by poles lashed to the binders of the raft.

"The binders will be smaller logs or poles, not less than 4 inches in depth at the small end, and placed not more than 8 feet apart, and those on the outside will be close to the ends of the logs.

"The logs and poles used may be loblolly, or other cheap variety of pine, and must be of gentle taper and sufficiently straight.. Logs will not be used that do not fit close enough together to hold all the stone securely, even without the use of brush."

The price agreed upon in the contract for mattress of that character was 73-1/3 cents per square yard.

I read from Articles of Agreement of Sept. 1st, 1884, between Col. Gillmore and John F. Gaynor, for constructing training walls and wing dams, Savannah River and Harbor, Georgia. I think the terms are exactly identical with those just read, but I will read them:

"The mattress is simply a raft of logs not less than 12 inches in average diameter, and not less than 6 inches in diameter at the small end, placed in close contact side by side, at right angles to the line of the wall or dam, and firmly held by transverse binders spiked or bolted to them.

"The binders will be smaller logs or poles filled up with compact bundles of brush, placed parellel to the logs or mattress, to such depth as to give a thickness of not less than 6 inches when compacted in the finished work, secured in place by pole-binders, in such manner as the Engineer in charge

shall approve. The logs and binders used may be of loblolly,
or other cheup variety of pine, and must be of gentle
1156 taper and sufficiently straight, and the brush will be live,
hard-wood brush. Logs will not be used that do not fit close enough together to hold the stone safe even without the aid of brush."

The price agreed upon in this contract for such a mattress was 47 cents per square yard.

I read from Articles of Agreement of Dec. 5th, 1884, between Col. Gillmore and Edward H. Gaynor, for constructing wing dams in Savannah River:

"The dams will consist of brush made into fascines and loaded with stone or gravel. The fascines may, at the option of the Engineer in charge, be laid one at a time, or in mats, except where the water is over 4 feet deep, when they must be made into mats. When laid in shoal water, or when required by the Engineer in charge, the fascines will be fastened by stakes. There shall be, when stakes are used, at least two stakes to each fascine or to each foot in length of the mat. These stakes shall be at least 5 feet long for bottom layers and 6 feet long for the upper layers, should any be laid, and they must be driven until their heads are level with the brush.

"When any one layer of fascines is laid, the covering of stone may be from 6 to 10 inches thick.

"When more than one layer of fascine is used, each layer, except the upper one, shall be covered with stone or coarse gravel, or a mixture of both, from 4 to 6 inches in thickness.

"The second layer of brush shall be laid from 5 to 8 feet (as may be required) further up the stream than the lower layer, and the second layer shall be fastened and covered as the lower, and additional layers shall be similarly placed and covered, except that they shall be placed and laid each
about 2 feet further up the stream than the one imme-
1157 diately below it, and the top layers covered with stone
so described above, where a single layer of brush is used.

"In general, the volume of stone to a dam, after it shall become compacted, should not exceed one-half to one-third the volume of the fascine. Where coarse gravel is used, it may be necessary to apply it more liberally.

"The amount of stone or gravel to be used, and the manner of distributing it, will be prescribed by the Engineer in charge.

"At the juncture of each dam with the shore, there will be built 100 to 150 feet of shore protection 25 to 50 feet above, and 75 to 100 feet below, the center line of the dam. These shore protections will consist of a layer of fascines or loose brush as may be required, made into mats, sunk at the foot of the slope of the bank, extending out in the river and up the slope so far as may be necessary, and rip-rap stone will be distributed over said mat in such a manner and in such quantity as will be designated by the Engineer in charge.

"Similar shore protections may also be required at other points of the bank, in the section of the river indicated in these specifications, and will be executed wherever required by the Enginer in charge.

"The bank will be trimmed to a regular slope, and all trees, stumps, etc., removed before the building of the shore protection, and no extra charge for such preparation of the bank will be allowed.

"Fascines shall be made of live brush well trimmed and closely choked, 15 feet long, and from 12 to 15 inches in
1158 diameter at at the butt, and tied with four bands of tarred rope, the bands to be placed as the Engineer in charge shall approve. When made into mats, they will be closely compacted, and secured by at least three pairs of binding poles, joined by ties of tarred rope not more than two feet apart. The form of the fascine will be slightly tapering, and when made into mats, the butts will be side by side."

The price paid for fascines under this contract, 93 cents per square yard.

I read from Articles of Agreement entered into October 28, 1886, between Col. Gillmore and John F. Gaynor, for constructing training walls in Savannah Harbor and River, etc.;

"The mattress is simply a raft of round logs, not less than 12 inches in average diameter, and not less than 9 inches in diameter at the small end, placed in close contact side by side, at right angles to the line of the wall or dam, and firmly held by transverse binders spiked or bolted to them. The binders will be similar logs or poles, not less than 5 inches in diameter at the small end, and placed not more than 6 feet apart, and those on the outside will be close to the ends of the logs.

"The spaces between the binders will be closely filled up with compacy bundles of brush, placed parrellel to the logs of the mattress, at such a depth as to give a thickness of not

less than 12 inches when compacted in the finished work, secured in place by pole binders in such manner as the Engineer in charge shall approve.

"At the option of the Engineer in charge, there will be placed upon the raft of logs, instead of the bundles of brush described, a layer of live wood brush sufficient to give 5
1159 inches in thickness in the finished work, secured in place by poles lashed to the binders of the raft.

"The logs and binders used may be of loblolly, or other cheap variety of pine, and must be of gentle taper and sufficiently straight, and the brush will be live, hard-wood, brush. Logs will not be used that do not fit close enough together to hold the stone safely, even without the aid of brush."

I am reading this mainly to get at the price bid and the kind of mattress bid upon. Mattress in the work will be paid for at the rate of 38¢ per square yard.

Counsel has called my attention to the following in the Supplemental Articles of Agreement:

"The fascines will be made of live brush, well trimmed, the butts placed in alternate directions and closely choked. They shall be from 10 to 20 feet long, from 12 to 15 inches in diameter, and tied with from 4 to 6 bands of wire or tarred rope, and shall be placed in the work singly or in mats, in such places, quantities, and manner as may be directed by the Engineer in charge. Fascines as finished and placed in the work shall be paid for at the rate of $1.10 per cubic yard."

I read from Articles of Agreement between Capt. Jas. C. Post, Corps of Engineers, and Wm. H. Browne of Brooklyn, N. Y., for Improving Savannah River above Augusta, Ga., dated Jan'y 25, 1883:

"Details of Construction of Wing Dams.

"The wing dams will generally be composed of a compact pole-and brush mattress, overlaid with loose stone; but at some places the mattress may be omitted, and the dam be formed of stone alone, as shall be directed by the Engineer in charge. The mattress will be constructed of Willow or other suitable live brush. It will consist of a bottom grillage of poles, not less than six inches thick at the butt end, placed about six feet apart between centers, both longitudinally and transversely, and the lower poles shall be parallel to the line of the wing dam. Upon this grillage brush
1160 will be piled transversely to the line of the dam and to a height of not less than thirty inches, or more, so as to

secure a thickness of the layer of brush of not less than eighteen inches when fully compacted. A top grillage, constructed like the one placed at the bottom, will rest on top of the brush. The poles of each grillage will be firmly lashed together by wire or tarred rope lashings, and the upper and lower grillage will also be firmly lashed together, in such a manner as the Engineer in charge shall approve, so as to form a strong and compact mattress not less than eighteen inches thick through the brush in the finished work. The poles may be of a suitable variety of live pine, and must be of gentle taper, and as straight as can be procured."

The price for a mattress of that character was 92 1/2¢ per square yard.

Mr. Rose: Will you have it stated on the record that all of these contracts are made on form 19a, and that one of the conditions is, that if satisfactory progress is made, and that "if satisfactory progress is made" is written in? There seemed to be some point made on that the other day.

Judge-Advocate: Well, I will admit that it is in them without going over them,—that it is in all the contracts that have been made in this Engineering District.

Q. (Judge-Advocate continuing examination) Do you know who recommended that supplemental contract?

A. Lieut. Carter recommended it to Col. Gillmore.

Q. Counsel showed you a little red book; have you seen much of that red book of late years in the office?

A. Yes, sir; it is right in the office, but it has not been issued of late years.

Q. You mean that there are copies of it in the office?

A. Yes, sir.

Q. Have you seen it in the hands of employes for the government of them,—for their government?

1161 A. Those who are in the employment,—in the older employment, have them, but I have never seen that anybody uses the book.

Q. Has any employe of the Government, serving under the accused at headquarters, been called to account for disregarding the instructions contained in that book of late years, to your knowledge?

A. Yes, sir.

Q. To your knowledge, I asked?

A. Yes, sir; in 1894.

Q. Who was it?

A. A man named Schneider was discharged for violating a rule.

Q. What rule did he violate?

A. For accepting money from a contractor.

Q. Who was the contractor?

A. He accepted money from Chas. C. Ely and I think from Jacob Paulsen.

Judge-Advocate: Counsel calls my attention to the fact that I failed to read the Articles of Agreement between Col. Gillmore and Edwd. H. Gaynor, of June 22, 1885, for Constructing Spur-jetty at Tybee Island, Ga. The specifications for the improvement are in writing. (Reading)

"The jetty will consist of a raft composed of round logs 30 feet in length, not less than 12 inches in average diameter, and not less than 9 inches in diameter at the small end, placed in close contact side by side, at right-angles to the line of the jetty, and firmly held by transverse binders spiked or bolted to them.

The Binders will be smaller logs or poles, not less than 5 inches in diameter at the small end, and placed not more than 7 feet apart, and those on the outside will be close to the end of the logs.

"The logs and binder used may be of loblolly, or other cheap variety of pine, and must be of gentle taper and sufficiently straight. Logs will not be used that do not fit close enough together to hold the stone safely.

"The raft will be laid in sections," etc.

1162 Price paid for a mattress of that kind, $1.12 1/2 per square yard. The quantity is not mentioned.

Wtiness excused.

Judge-Advocate: That, may it please the Court, brings me to a close, and the time has arrived which I have indicated might arrive at any time, when I ask for a slight delay, and I ask that, when the Court adjourns, it adjourn to meet Tuesday morning at 11.00 o'clock. It will give me much needed time in the preparation of the case.

The President: If there are no objections, Court stands adjourned until Tuesday morning, Feb'y 8th, at 11.00 o'clock a. m.

(Court adjourned at 3.00 p. m.)

THOMAS F. BARR
Col. & Asst. Judge Adv. Genl
Judge Advocate—

1163 United States Court Room,

Savannah, Georgia,

February 8, 1898.

Court met pursuant to adjournment of Saturday, February 5, this morning at 11 o'clock.

Present:

All the members of the Court and the Judge-Advocate.
The accused, his counsel, and the Reporter G. T. Cann, were also present.

JOHN G. SMITH, called as a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination.

Questions by Judge-Advocate.

Q. Please state your full name and place of residence, Mr. Smith?

A. John G. Smith, Charleston, South Carolina.

Q. What is your business?

A. Sub-marine engineer and contractor.

Q. What were you doing in 1891?

A. I was engaged on the North Island Jetty work, Winyaw Bay, Charleston, S. C.

Q. Off what coast?

A. Off the coast of South Carolina.

Q. What was your employment?

A. I was superintendent of jetty work.

Q. Who, at that time, had the contract for the improvement that were going on?

A. Will T. Gaynor.

Q. And you were superintendent for him over the work?

A. I was, sir.

Q. Do you know the accused here, Captain Carter?

A. Yes, sir.

Q. How long have you known him?

1164 A. Off and on for seven or eight years.

Q. Did you at any time see him at Georgetown or where these works were going on?
A. Yes, sir; on one occasion.
Q. On what occasion was that?
A. He came down—in answer to a telegram I sent a tug boat to Georgetown for him and bought him down to the Island.
Q. In answer to what telegram, who was that from?
A. Captain B. D. Green.
Q. Where was it sent from?
A. Philadelphia I think, sir, as near as I can remember.
Q. Have you that telegram?
A. No, sir, I have not.
Q. Have you tried to find it?
A. I have, sir.
Q. Made diligent search and been unable to find it?
A. I have been unable to find it.
Q. It asked you to send the tow boat where?
A. To Georgetown.
Q. To meet Captain Carter?
A. To meet Captain Carter and bring him down to North Island.
Q. Did you send the boat?
A. I did, sir.
Q. Did Captain Carter return with it to North Island?
A. Yes, sir.
Q. Who was the officer in charge of that district?
A. Captain Bixby.
Q. Captain Bixby of the Engineer Corps?
A. Of the Engineer Corps, yes, sir.
Q. What did Captain Carter do on his arrival?
A. He looked around and asked me how I was getting on with the work, and went from one end of the trestle, one way and the other, to see how everything was going on.
1165 Q. What time did he arrive?
A. He arrived about 10 o'clock.
Q. How long was he there?
A. Until about half past two or three in the evening.
Q. How extensively did he examine the work going on?
A. Well, he walked up and down the railroad track and went out on the end of the trestle and examined the machinery

and asked how I was getting along with the work. I told him I was getting along very well, I thought, for the amount of force that I had.

Q. How as to the character of the work, did he have any comments to make?

A. No, sir; no more than merely he asked me how I was getting along with the sheet piling. I told him. He asked me if I thought I would get along better if the sheet piling was done away with, I told him, yes, sir, a good deal.

Q. Would that have been a saving of money?

A. It would have been to the contractors; yes, sir.

Q. Did Captain Carter make any further examination of what was being done there?

A. Not of the work, no, sir. No more than looking around, that is about all the inquiries he made in regard to the work or the manner the work was being did.

Q. Did he make any examination as to the administration of business?

A. Yes, sir, he asked me how I was getting along officially. I told him I was not getting money enough to carry on the work as it should be. He asked me how was that, I told him I was only sent money, so much at a time, it didn't amount to a row of pins when I would get three or four vessels in. He asked me how that was, I told him Captain Green was only sending me $2,000.00 at a time.

Q. Who was sending you only $2,000.00 at a time?

1166 A. Captain B. D. Green.

Q. He was not the contractor?

A. No, sir.

Q. Will T. Gaynor was the contractor and Captain Green sent you the money. Well, what else did Captain Carter do?

A. I showed him the books.

Q. Did he ask to see them?

A. No, I asked him if he would like to look at them, he said well, he might as well, I pulled them out and he looked over them.

Q. Well, how long was he engaged in the examination?

A. Well, you could not say it was an examination, about 10 or 15 minutes to look over the books.

Q. Why did you consider you had authority to let him look at the books?

A. Well, I had no direct cause.

Q. You knew that they were acquaintances?

A. I knew that they were acquaintances, yes, sir.

Q. Was not it rather an unusual thing, Mr. Smith, to show the books of your employers to an outside party?

A. Well, I knew that Captain Carter and Captain Green were pretty intimate, I had seen them together a great deal, I thought there was no harm in it.

Q. Where had you seen them together?

A. In Savannah.

Q. Frequently?

A. Frequently, yes, sir.

Q. At what point?

A. Why I saw them together a great deal in the Pulaski House.

Q. Well, how frequently do you think you saw them together, what hours of the day?

A. Well, as a general thing it was in the evening, after supper.

Q. Anyone with them?

A. No, sir.

1167 Q. Have you anything to show that Captain B. D. Green took an interest in that contract of W. T. Gaynor's at that time?

A. I have letters to show that he was connected with it. (Here the letters are produced by the witness and handed to counsel for the accused.)

* * * * *

1168 Judge-Advocate: I offer in evidence and read these communications: (Reading)

"New York, June 5, 1891.

"Capt. John G. Smith,
Georgetown, S. C.

Dear Sir:

I inclose letters received today. I have written Donaldson, saying I would be in Georgtown about the 25th, June, and asking him to wait till then if he was unable to come to any agreement with you. I wish you would write me what you can do. If you can settle it, also how much you did in May, and how you are getting along. I have not heard from

you since I was there; I shall have the launch next week. There seems to be some difference between you and Donaldson. Can't you reconcile it? We don't want a lawsuit. You and Donaldson might go to Savannah and all be together and settle it.

Yours, truly

B. D. GREEN."

1169 "New York June 30, 1891.

"Dear Sir:

In some way your telegram to Mr. Gaynor was covered up on his desk, so that I did not see it, or I should have sent you money before. I inclose $2,000. I wrote you yesterday. I have ordered the iron and the Manilla rope.

Yours respectfully,

B. D. GREEN."

"New York, Nov. 7, 1891.

"Dear Sir:

Your telegram received. The arrangement I made with Dawson was that he was to have $5 a day and his men $2.50 a day, and board themselves. If they stayed through the winter and could do the work, I was to furnish transportation down there, but if they quit after a short time, this fare, amounting to $23 each was to be deducted. Ed Gaynor will come up there in a few days and see you.

Yours truly,

B. D. GREEN."

"Does the current still continue strong? or what is the trouble?"

Q. Do you know the meaning of that phrase, who were all to be together in Savannah?

A. Well, what he meant sir, was so he could see the two; this man, Donaldson and John Gaynor; that's what he alluded to.

Q. John Gaynor was not the one who had the contract there, it was Will Gaynor, was not it?

A. I never saw Will Gaynor on the job. John Gaynor was the party, one of the parties I was supposed to look to.

Q. Did you receive any money from any of the Gaynors, for payment on the work?

A. No, sir.

1170 Q. Who furnished the amounts?

A. B. D. Green, all checks were made out and sent by him.

Q. You said that here in Savannah, you have seen the accused and B. D. Green at the Pulaski House after dinner, was that at night?

A. Yes, sir, after supper in fact, after supper.

Q. How long have you seen them together at one time?

A. An hour at a time.

Q. Frequently?

A. Yes, sir, frequently.

Q. And how recently?

A. Up to 1891 and 1892.

Q. You have not been in Savannah so much since then?

A. Not connected with the work.

Q. Where were you in 1889?

A. In 1889, I was on the Fernandina work.

Q. Who was the contractor there?

A. Anson M. Bangs.

Q. Did you ever see him there?

A. No, sir, never saw him on the works.

Q. Who furnished the money there?

A. The two first checks came in Anson Bang's name and the others came in Capt. B. D. Green's name.

Q. Do you know Myron F. Wheeler?

A. Yes, sir, well.

Q. Was he there at that time?

A. No, sir.

Q. Where did you know him?

A. I have known him on the Georgetown work and the Savannah work, and the Richmond, Va., work.

Q. Did you know him in '91 or '92?

A. Yes, sir.

1171 Q. What was his employment in '91 and '92?

A. The first part of '91 I think he was connected here with the Savannah work.

Q. Working for whom?

A. For the Atlantic Contracting Co.

Q. Where was he in '92?

A. '92 he came down to Georgetown to relieve me.

Q. What was the nature of his employment?
A. Foreman.
Q. Foreman of what?
A. The Georgetown work.
Q. The entire work?
A. Yes, sir.
Q. Do you know what his compensation was?
A. I never knew him to get over $75 a month; if he got any more, I never heard of it.
Q. Do you know William H. Walsh?
A. Yes, sir.
Q. Is it always pronounced that way?
A. No, sir, I always heard it called "Welsh."
Q. Always heard it pronounced Welsh?
A. Yes, sir.
Q. Did you know him in '91 and '92?
A. Yes, sir.
Q. What was he doing?
A. Foreman of a mattress camp.
Q. Do you know what he was being paid?
A. As near as I can remember, I never knew of his getting over $50 a month.
Q. Do you know who Welsh is, what his origin is, where he came from, what his connections are?
A. Well, I know he is a cousin of John Gaynor's, he married in the family, he married a Miss Gaynor, I think, I 1172 am positive he married one of the Gaynors.
Q. Now, as to Myron J. Wheeler,—it is not Myron F?
A. Myron J.
Q. About his connections?
A. He is a relative by marriage.
Q. Of whom?
A. Of the Gaynors and Bangs.
Q. Do you know if Anson M. Bangs is related to the Gaynors in any way?
A. Yes, sir.
Q. In what way?
A. A brother-in-law, he married John Gaynor's sister.
Q. When the Bangs' contract was being executed, while the work was being performed?
A. To which contract have you reference?

Q. That is the Bangs' contract about which you have testified?

A. The Fernandina contract, yes, sir.

Q. You say you never saw Bangs there?

A. I never saw him on the w rk.

Q. Did you see B. D. Green there?

A. Yes, sir, on several occasions.

Q. What was he doing there?

A. He came down to see how the work was going on.

Q. Did he give instructions in regard to it?

A. No, sir, he said he saw no room for improvement. He stayed all night and went off the next morning.

Q. Did he examine the work?

A. Yes, sir, he never went outside.

Q. You recognized his authority to examine the work and criticise it if he saw fit?

A. Yes, sir.

Q. Did you receive instructions by mail or wire from Anson M. Bangs in relation to that contract?

1173 A. No, sir, only when those two checks came that I got from Anson Bangs.

Q. He sent the checks?

A. Yes, sir, in a letter of instructions.

Q. In a letter of instructions,—did you receive letters of instruction from B. D. Green?

A. I got instructions before I left Savannah.

Q. Did you receive communications from him in relation to that work?

A. I received letters right along.

Q. Did you receive letters from anybody else in connection with that work except Capt. Green?

A. No, sir.

Q. When Capt. Carter examined the book, did he make any comment?

A. No, sir.

Q. None whatever?

A. No, sir, no more than when he started off going down to the boat, he asked me if I thought there was any more money in it to do away with the sheet piling, I told him yes, I thought there was a good deal more.

Q. What did he say then?

A. Well, he said to continue on with it until such time as I heard further.

Q. Whom were you to hear from?

A. That he didn't say.

Q. Was there any one present when he made that statement except yourself?

A. Yes, sir, Mr. Twiggs was right behind me as we were walking out the house.

Q. Which Twiggs?

A. P. E. Twiggs, I think.

Q. P. E. Twiggs?

A. Yes, sir, Mr. Twiggs was an inspector on the work, 1174 I would like to state.

Q. Were you offered any position by any of these parties different from the one you occupied?

A. After I got the work started, and everything was going along very nicely, my understanding was I was to be sent to Orange, N. J., and I declined it, and I resigned.

Q. What were you to go to Orange, N. J., for?

A. To take charge of sewer work there?

Q. Who was it had that work, do you know?

A. The contract, as near as I remember was in Will. T. Gaynor's name; I am not positive about that.

Q. Any corporation mentioned?

A. I don't remember of any corporation being mentioned.

Q. Who asked you to go there?

A. John Gaynor.

Q. Any one else?

A. Yes, sir, Ed Gaynor, John and Ed Gaynor were present.

Q. Did any one advise you to go?

A. And I got a letter from Capt. Green, asking me to come up there and take charge.

Q. That was in Orange. N. J., when was that?

A. In the latter part of '91 or first of '92, I forget now exactly.

Q. Who was in charge generally at Georgetown?

A. I was up to this time.

Q. I mean what officer of the Engineers at the time?

A. Capt. Bixby.

Q. At the time they wanted you to go to Orange, Capt. Bixby was in charge?

A. No, sir, when they wanted me to go there, Major Stanton,—when they wanted me to go and report at Orange, N. J., Major Stanton was in charge.

Q. After Major Stanton had relieved Capt. Bixby?

1175 A. Yes, sir, he hadn't taken charge over a week or ten days.

Q. Did Capt. Carter say anything about what instructions he had to visit there, or orders he had?

A. No, sir, there was no such remark.

Q. Where was Capt. Bixby at the time he was there?

A. In Wilmington, that is, I suppose he was in Wilmington.

Q. That is where his office was?

A. Yes, sir, that was his office.

* * * * *

1180 This is a proposal of the Atlantic Contracting Company for the improvement of the Altamaha River, Ga., in 1892.

Judge-Advocate: I will mark that Exhibit 52A; a copy of which will be attached to the record, marked Exhibit 52A, to connect it with the previous exhibit.

* * * * *

1189 WILLIAM F. M'CAULEY, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination.

Questions by the Judge-Advocate.

Q. Please state you full name, Mr. McCauley.

A. William F. McCauley.

Q. What is your business?

A. My business now, I am Cashier of the Chatam Bank.

Q. You have been a resident of Savannah a great many years?

A. All my life.

Q. Do you know William H. Walsh, or Welch?

A. No, sir.

Q. Ever heard of him?
A. Yes, I have heard of him.
Q. When did you first hear of him?
A. I heard of him in connection with Colonel Gaynor.
Q. How long ago?
A. Oh, I don't remember, 8 or 9 years ago.
Q. What was the extent of your knowledge concerning him?
A. As foreman for Colonel John F. Gaynor, that is all I know about him, I never saw the man in my life to know him.
Q. Did you know Myron J. Wheeler?
A. I knew a Mr. Wheeler here, I don't know whether his name was Myron or not.
Q. What was his occupation?
1190 Q. What was his occupation?
A. He was foreman with Mr. Gaynor.
Q. When did you know him?
A. Ever since the Gaynor's have had contracts on the Savannah River, I don't know exactly how long ago.
Q. It was in connection with the Gaynors that you knew Mr. Wheeler?
A. Yes, sir.
Q. As you had known Mr. Walsh?
A. Yes, sir.
Q. I think they called that Welch here, don't they, Mr. McCauley?
A. I don't know, sir.
Q. Do you know anything about Welch's financial standing?
A. No, sir.
Q. Did you ever know anything of his financial standing?
A. No, sir.
Q. Do you know anything of Mr. Wheeler's financial standing?
A. No, sir.
Q. Never did?
A. No, sir.
Q. Did you ever go before Michial A. Connolly to execute affidavits?
A. Well, if I did the affidavits will show for themselves, I dont remember positively having done so, I may have done so, I have had some business dealings with Mr. Connolley.

Q. I show the witness "Exhibit 27", the proposal of William H. Walsh, Improvement of Cumberland Sound, Georgia. It that your signature, Mr. McCauley?

A. That is my signature, sir.

Q. And that also?

A. That's my signature.

Q. And do you remember making oath before Michael A. Connolley that you were worth $75,000.00?

1191 A. I guess I did, sir.

Q. You remember the circumstance?

A. I guess so, yes, sir; it has been some time ago, I don't know the date of that contract.

Q. It is William H. Walsh, September 10, 1892.

A. It is some time ago.

Q. You didn't know anything about the financial standing of Mr. Walsh at that time?

A. No, sir.

Q. Pretty heavy bond for a man that you didn't know?

A. It is a bidders bond, but I have security.

Q. What security?

A. I had the word of Colonel Gaynor that I would be protected if I signed the bond.

Q. You signed it at the request of John F. Gaynor?

A. Yes, sir.

Q. I show the witness "Exhibit 95", the proposal of William H. Walsh, opened July 10, 1891, that also is your signature, Mr. McCauley, and seal?

A. Yes, sir, both of those are my signatures.

Q. And you justified before Mr. Gillespie?

A I don't remember. I signed a number of bonds for a number of people at the time, I cannot state from memory who I qualified before.

Q. This is another bond for William H. Walsh, about whose financial standing you knew nothing positively?

A. No, I knew nothing.

Q. Were you also protected in signing that bond?

A. Let me look at that, Colonel, please.

Q. Certainly.

1192 A. Yes, sir.

Q. You were also protected in that, and I show you now "Exhibit 97", which is the contractor's bond of William H.

Walsh, Fernandina, Florida. In relation to that, that also is your signature, that is not a bidders bond?

A. Yes, sir; those are my signatures, both of them.

Q. You were protected in signing that bond?

A. Yes, sir.

Q. In the sum of $7,500.00?

A. Yes, sir.

Q. That also is your signature, Mr. McCauley?

A. Yes, sir.

Q. And this?

A. Yes, sir; that's my signature.

Q. That is before Mr. King, Clerk of the Circuit Court?

A. I cannot remember positively, you know it has been some time ago, I qualified before each of these gentlemen, but I cannot remember which one I qualified before.

Q. Those were fully executed?

A. Yes, sir; I stand by my signature, whatever you see there.

Q. That was for Charles C. Ely?

A. Yes, sir.

Q. Was that for Mr. Ely alone, or for any one else?

A. I signed that for Mr. Ely, just as the bond stated, I knew nobody else in connection with it.

Mr. Rose: What number is that?

Judge-Advocate: That is "Exhibit 107".

Q. This is "Exhibit 46", I show the witness "Exhibit 46", proposal of Charles C. Ely, Improvement of Altamaha River, Georgia; Darien Harbor, Georgia; Jekyl Creek, Georgia; and so forth. That is your signature, Mr. McCauley?

A. Yes, sir; what is the date of that?

1193 Q. That is April 6, 1895.

A. Yes, sir.

Q. Justification in the sum of $40,000.00?

A. Yes, sir.

Q. Your justification is in the sum of $40,000.00?

A. Yes, sir.

Q. Were you protected in that bond?

A. Well, we have always been for Charles C. Ely, I don't remember that.

Q. You knowing of Mr. Ely's standing, would you sign a bond of that amount for him?

A. To do work, yes.

Q. That is your signature, Mr. McCauley?

A. Yes, sir.

Q. With Anson M. Bangs as co-surety?

Judge-Advocate: This is a proposal of John F. Gaynor, for constructing training walls at Brunswick Harbor, Georgia, and Jekyl Creek, Georgia, opened February 14, 1891, which will be offered in evidence and a copy attached to the record and marked "Exhibit 46A".

Q. That is your signature, and that is also your signature?

A. Yes, sir.

Q. And the justification?

A. Yes, sir.

Q. In September, 1892, Mr. McCauley, you yourself became a bidder, didn't you?

A. Yes, sir.

Q. That was with a view to secure what has become known as the big contract?

A. Yes, sir.

Q. You bid there for 300,000 cubic yards of fascines at $1.74 per yard?

A. Yes, sir.

1194 Q. Have you been engaged in the construction of fascines before?

A. Never.

Q. How did you arrive at the figures?

A. That figure was made in my office.

Q. By whom?

A. By the members of my Company, I dont remember myself now exactly who did it.

Q. Well, who constituted the members of the Company?

A. Our Company, the Savannah Dredging Company is incorporated under the laws of the State of Georgia, we have a number of stockholders; the officers are Jacob Paulsen, President; W. F. McCauley, Secretary and Treasurer at the time those figures were made I was at home, I had been sick for some time with typhoid-malarial fever and Mr. Paulsen came to the house and we discussed the matter of making the bids.

Q. Was it an incorporated Company?

A. Yes, sir, I will explain the matter to you fully. We would have had considerable difficulty in getting bond for the Savannah Dredging Company, if we had not given one member of our Company, Mr. Paulsen, which is against the law to do that. So as not to violate the law I took the contract in my name, or would have taken it, had I been the successful bidder, which I was not. Mr. Paulsen qualified as bonds-

man and Colonel J. H. Estell qualified as bondsman on the bond.

Q. Were you at that time, Mr. McCauley, confined to your house as an invalid?

A. Oh, yes, I was in bed, I signed the papers before a Notary Public.

Q. You signed them in bed?

1195 A. Yes, sir.

Q. Then you have no personal knowledge of what you were bidding, or what you were stating?

A. As officers of the Company, we had discussed the prices together, it has been some time ago General, I dont remember now how we arrived at the prices. We watched the matter very carefully, went into all the details, and we put that figure in, feeling if we could get the work at that figure we would be safe and make some money out of it.

Q. Have you any recollection of the figures you made?

A. No, sir, I could not remember the figures at this time, at this date.

Q. In that bid I find, Mr. McCauley, you propose to use three steamers, that was for the Company?

A. Yes, sir, three steamers, three tug boats I suppose.

Q. Three steamers it says, what did that mean?

A. I dont know what we proposed to do at this date, it was a very easy matter for us to get boats, we had nine boats, and the Savannah Dredging Company had one boat.

Q. I call attention to one feature that perhaps you will remember, it being a striking one, the bid was $1.55 per lineal feet for pile dam, which makes $6.20 per piling, driving piles, three of them would make $18.60?

A. For the cluster.

Q. That would make for the three pilings $18.60?

A. Yes, sir.

Q. Do you recall any distinction the bids made between piles and pile dams?

A. No, sir, I do not. We bid the bid and we lost the bid and the whole thing has passed from my memory.

Q. And there was also accompanying that bid $51.00

1196 for three piles driven in one cluster, that is a marked feature of the bids, can you recall any distinction on that point?

A. No, sir.

Q. You don't remember any didtinction on that point?

A. No, sir.

Q. Did you consult any parties outside the stockholders in your Company, or did any of them give you any information?

A. Not to my knowledge.

Q. You bid $2.60 a ton for rock. Where did you propose to get it, for large rock?

A. I think we proposed to get in New York and Florida, I think.

Q. Did you investigate as to freight rates that you could obtain?

A. Yes, I suppose we did at the time, it is not likely we would make a bid of that character without investigating that.

Q. Do you know who wrote the proposal?

A. No, sir, I do not, I was in bed.

Q. This is the proposal, Mr. McCauley, do you recognize by whom it was filled out (Handing witness a paper)?

A. No, sir, I do not know.

Q. Dod your Company have a Secretary?

A. I was the Secretary.

Q. Did you have an assistant?

A. No, I dont think I did, at that time there may have ben a clerk in the office.

Q. You did have a clerk in the office? This is filled up in a handwriting with which you are not familiar?

A. I dont know whose writing it is.

Q. You dont know whose writing it is?

A. No, sir, I dont know.

Q. It was not written in your presence?

A. Oh, no, I was too ill.

1197 Q. Entirely different colored ink?

A. Yes, sir.

Judge-Advocate: I show the witness "Exhibit 34."

Q. You had been in business before, Mr. McCauley, contracting with the Government, hadn't you?

A. We have done a little contracting with the Government, not a great deal with the Government, most of our work has been done with mining phosphate rock.

Q. You have done contracting with Captain Carter?

A. I think we had one, possibly more, we have not had many contracts under Captain Carter, I will say that.

Q. Do you recall the incident of the affixing your signature, or were you too ill?

A. I remember affixing my signature.

Q. Did you read the bids, or were they read to you?

A. Yes, sir, they were read to me, I had full knowledge of everything.

Q. It was a contract involving many hundred thousand dollars?

A. Yes, sir.

Q. The different items were explained to you?

A. Yes, sir.

Q. At that time you fully understood what you were signing?

A. Yes, I knew what I was signing, I was not able to get down to the office to make those papers up, in fact I was in bed; they brought an officer who administered the oath, I dont remember the name, I think it was Mr. Peed, I am not sure.

A. At the time, Mr. McCauley, you submitted the proposal you were surety on Mr. Walsh's bond at the request of Colonel Gaynor, were you not?

A. You mean the first bond you showed me?

Q. Yes.

A. I was on Mr. Walsh's bond at the request of Col-
1198 onel Gaynor, yes, sir.

Q. About a week before. And about two months after, you were again a guarantor for the Atlantic Contracting company?

A. I dont remember, you have the documents.

Q. You dont remember the fact?

A. It ought to be a matter of record. What year was that?

Q. 1892, about two weeks after you made this bid.

A. Well, that would make it in November, I was out in November, I was taken sick the 18th of August, I got out about the 25th of September.

Q. After bidding unsuccessfully, you became his surety, you dont recall that?

A. I dont recall it.

Q. A week before the bids were opened, at his request you became his surety for $75,000.00.

A. Yes, sir, will you ask me that question, I didn't exactly catch what you meant. What is the date of the bid I became surety on for $75,000.00?

Q. September 10, 1892.

A. It was in 1891 I became surety, September 10?

Q. September 10, 1892.

A. September 10, 1892?

Q. Yes, sir.

Cross-Examination.

Question By Mr. Charlton.

Q. Now, it seems you were going on bonds for the contracts. and you were making bids and doing all those things, before and after, were you conspiring and confederating with the Gaynors and Captain Carter to defraud the United States Government?

A. I hardly think so, and I dont think anybody in Savannah thinks so.

1199 Q. I dont think so either, Mr. McCauley, I dont know where this evidence is tending. I thought I would give you the opportunity to say whether you were or not, you may be a divers person? Is it anything unusual for a man who was practically in the same line of business to go on each others bonds.

A. I never found any difficulty in getting bond.

Q. Is it not a common practice?

A. Yes sir.

Q. You do not regard a man as a bitter enemy because he happens to bid against you?

A. No sir.

Q. You are perfectly able to go on those bonds?

A. I consider so.

Q. Did go on them?

A. Yes sir.

Q. Do not repudiate any case?

A. No sir.

Q. You are at present the Cashier of the Chatham Bank?

A. Yes, sir.

Q. That is a responsible position?

A. I think it is generally regarded as a responsible position.

Q. You are pretty well familiar with the financial status and rating of people?

A. I know some, yes, sir.

Q. Will you be kind enough to tell me whether or not Mr. James Foley's name on a paper for $5,000.00 could go through your Bank?

A. Secured by proper collateral.

Q. No, by his securing it himself, by his name alone.

A. No, sir, no ones name.

Q. If he had a man's name on it not worth that amount of money?

1200 A. No, sir.

Judge-Advocate: I am quite willing to divide Mr. Sterly as one of my witnesses, but I am unwilling to divide all my witnesses with you.

Mr. Charlton: That is the only question.

Judge-Advocate: Very well.

Q. I mean a name upon the paper which itself carries no financial responsibility. Could Mr. Foley's name by being put upon it enable that paper to get $5,000.00?

A. Mr. Foley's connection has always been very satisfactory, he has always met his paper promptly, I dont think it would be proper to answer that question, it would have to go before the Board of Directors, I would not pass anybody's paper, not even yours, and I think a great deal of you.

Q. I understand that you had enough confidence in one of these terrible contractors to take his word for $75,000.00?

A. Yes, and I would take it again, I did no more for him than he would do for us, it was simply a bidders bond. I knew the bond would expire in a few days, as soon as the contract was awarded he would secure other men and I would be released.

Q. Still you had reliance upon his word?

A. Yes, sir.

Q. Have you ever bid upon Government work anywhere else?

A. Oh, lots of times.

Q. In this neighborhood?

A. In this neighborhood.

Q. Outside of Savannah?

A. No, I have never bid outside of Savannah.

Q. Have you ever made efforts to get specifications in Charleston?

A. Oh, yes.

Q. Be kind enough to tell the court what your experience was.

1201 A. I remember when General Gilmore was in charge of the district prior to the time of Captain Bailey, I dont remember whether Captain Post or Captain Green was in immediate charge, my inclination is that Captain Post was in charge; there was a contract to be let in the Savannah River. We heard of it a week prior to the opening of bids, there was no time to get the specifications by mail so I rushed over to

Charleston and applied for the specifications and they gave me one copy. I asked the Chief Clerk to give me three copies, that we proposed to bid, he told me that he could not give me any more that he did not have any more at his disposal and if I wanted to bid I would have to make out the duplicate and triplicate myself, which I did. I stayed up all night writing. I thought there would be a lot of bidders and put the bid very low, and much to my surprise we got the bid.

Q. That was not Captain Carter?

A. Oh, no, that was not Captain Carter.

Re-direct Examination.

Questions by the Judge-Advocate.

Q. Who was that clerk?

A. I dont remember.

Q. How long ago was it.

A. 14 or 15 years ago.

Q. Where was the office then?

A. In the Custom House building in Charleston.

Q. Oh, at Charleston?

A. Yes, sir.

Q. You made a personal application.

A. Yes, I went over to Charleston myself to get the specifications and they could only give me one copy.

Q. Were there any printed copies?

1202 A. Yes, sir, one printed copy, I made the other two myself, copied them out.

Q. After that generous distribution, so that they had but one copy left, you were the only bidder?

Mr. Blair: There was nothing said about a generous distribution of the specifications.

Judge-Advocate: There must have been because there was only one left.

Witness: Yes, I was the only bidder.

Re-cross Examination.

Question by Mr. Charlton.

Q. You dont know whether they had given them out, or didn't have them there?

A. No, sir.

Q. That is all they gave you?

A. That's all.

Q. Do you remember how large a contract it was, how much was involved?
A. It was only a small one, I dont remember now, possibly two or three thousand dollars.

* * * * *

1206 At this point in the proceedings of the day, Reporter Geo. T. Cann was relieved by Reporter W. O. Tarver, who reported until the hour of adjournment.

ANSON SMALL, (colored) a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by the Judge-Advocate.

Q. What is your full name?
A. Anson Small.
Q. Where do you live?
A. Rose Juice, Ga., near Bluffton.
Q. Where were you living last year?
A. Rose Juice, Ga.
Q. What kind of work were you doing?
A. Working on the jetty last year for awhile.
Q. Who were you working for?
A. I was working with Mr. Welsh.
Q. What was Mr. Welsh doing?
A. Putting in fascines, and building them up.
Q. Those were bundles of brush?
A. Yes, sir.
Q. What kind of work were you doing?
A. I was working tying brush.
Q. Tying what?
A. Tying brush.
Q. The fascines that you spoke of?
A. Yes, sir; that is what they call fascines.
Q. How many of you did it take to make one?
A. Three of us; three of us worked together to a bench.
Q. How much did you get apiece?
A. 2 1/2c apiece.
Q. You were paid by the number you did?
1207 A. Yes, sir.
Q. Two and a half cents.
A. Yes, sir.

Q. Who paid you?
A. Mr. Welsh.
Q. Did each man get 2 1/2¢ or all three of you?
A. Yes, sir; 2 1/2¢ to the bundle; that is, we made fifty bundles for a day's work.
Q. And you got 2 1/2¢ apiece for the bundles you made?
A. Yes, sir.
Q. And that was divided among three laborers?
A. Yes, sir.

Cross-Examination by Mr. Charlton.

Q. Did you have to furnish your own clothes and living during that time?
A. Yes, sir.
Q. And there was $1.25 to divide among the three of you?
A. Yes, sir; that is for fifty bundles.
Q. Living must be cheap over in Carolina?
A. No, sir; not cheap, but, of course, that was all we could get.

Re-direct Examination by the Judge-Advocate.

Q. You had to take what you could get, did you?
A. Yes, sir.
Witness excused.

1208 HECTOR KINLAW, (colored) a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by the Judge-Advocate.

Q. What is your full name?
A. Hector Kinlaw.
Q. Where do you live?
A. New Bluffton.
Q. Where were you living last summer?
A. Near Bluffton.
Q. Who were you working for?
A. Working for Mr. Walsh and Mr. Gaynor.
Q. What were you doing?

A. Tying brush.
Q. How many men were helping you? How many were there together?
A. Three.
Q. Making what they call fascines?
A. Yes, sir.
Q. How much did you get apiece for them?
A. 3 1/2¢.
Q. What men were with you?
A. Anson Small and Moses Brandt.
Q. That makes the three?
A. Yes, sir.
Q. How many bundles did you make in a day?
A. Well, sir; called fifty bundles a day's work.
Q. You called fifty bundles a day's work?
A. Yes, sir.
Q. How much money would you get for a day's work,—the three of you?
A. The three of us divided it up, and the three of us got, I suppose it come to $3.50; divided that up together and—
Q. I will not ask you to do a sum in arithmetic for me. How often were you paid?
A. Every two weeks.
1209 Q. How much did you get at that time? What sum of money was paid you at the end of two weeks?
A. At the end of two weeks we drawed two dollars apiece.
Q. Two dollars at the end of two weeks?
A. Yes, sir.
Q. Now, try to recollect what you did receive; two dollars at the end of two weeks for two weeks only?
A Yes, sir; two dollars apiece.
Q. Was that the most you ever received?
A. Yes, sir; that was the best we got.
Q. One dollar a week?
A. Yes, sir.
Q. How many bundles could you make every day?
A. Every day we could not make fifty; some days there was no brush; some days good brush and some days there ain't.
Q. What is the largest number you ever made in a day?
A. Some days we make fifty bundles, and some days we didn't make but twenty, when the brush was scattering and scraped up.
Q. What became of the bundles after you made them?

A. Hauled them. After we done make them, they marked them and hauled them.
Q. All of them?
A. Yes, sir.
Q. Took them away?
A. Yes, sir.
Q. Did you always get as much as 3 1/2¢?
A. No, sir.
Q. What did you get at other times?
A. Well, we got at the rate of about 40¢ sometimes.
Q. I mean for each bundle?
A. For each bundle, 3 1/2¢ a bundle.
Q. You always got the same price?
A. The same price.
1210 Q. Always?
A. The same price when I was working for them.

Cross-Examination by Mr. Charlton.

Q. You have always lived in South Carolina?
A. Yes, sir.
Q. About Bluffton?
A. Yes, sir.
Q. When did you come to Savannah this time?
A. I came to Savannah last Friday.
Q. Were you up here on Saturday?
A. Yes, sir.
Q. Where were you?
A. Up here.
Q. In this Court room?
A. No, sir.
Q. In the room over there?
A. Yes, sir
Q. All of you?
A. Yes, sir.
Q. Was any white man in there with you?
A. No, sir.
Q. At no time?
A. No, sir; I didn't see any was in there.
Q. You were all just there together?
A. Yes, sir.
Q. What made you come over here? Who asked you to come over here?
A. To the Court?

Q. Yes?
A. I don't know rightly, sir, the gentleman's name.
Q. Did you hear his name?
A. Yes, sir.
1211 Q Would you know it if I called it?
A. Yes, sir.
Q. Was it Mr. Hale?
A. Yes, sir; that is his name.
Q. What did Mr. Hale say to you?
A. He asked me the same question what you asked me; asked me if I was at work on the brush work, and I told him yes, sir, and I up and told him, and then he went back, and come back, and I had a summons to come.
Q. Did he tell you you would get anything?
A. No, sir; didn't give me nothing.
Q. Has he been with you since then?
A. No, sir.
Q. Have you had any talk with Mr. Hale since you have been here?
A. No, sir.
Q. Have you seen him since you have been here?
A. Saw him this morning.
Q. Did you have any talk at all with him?
A. No, sir.
Q. Did he have any talk with any of the other boys?
A. I didn't notice that.
Witness excused.

1212 A. M. MILLER, (colored) a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by the Judge-Advocate.

Q. What is your name?
A. A. M. Miller.
Q. Where do you live?
A. Near Bluffton.
Q. South Carolina?
A. Yes, sir.
Q. Did you ever work in the brush camp?
A. Yes, sir.

Q. When?
A. Over at Montpelier and near Bluffton.
Q. Did you work there last summer?
A. Yes, sir.
Q. Who for?
A. Mr. Welsh.
Q. Mr. Welsh was your foreman?
A. Yes, sir. Mr. Coles was foreman in the woods,—counted the brush.
Q. Coles counted the brush?
A. Yes, sir.
Q. Mr. Welsh was foreman at what place?
A. He was foreman at the same place; him and Mr. Coles together.
Q. You were making what they call fascines there?
A. Making brush.
Q. Putting the brush together?
A. Yes, sir; tying them together in bundles.
Q. How much did you get apiece for those bundles you made?
A. Mr. Coles was the boss man in the woods, and I asked him what he was paying, and he said he didn't know, and that I must work on until a certain time, and finally he referred me to Mr. Welsh, and I asked Mr. Welsh what he was paying, and he said 2 1/2¢ a bundle.
1213 Q. How many did it take to work on a bundle at one time?
A. Two at the bench and one chopping brush.
Q. How many bundles did you make in a day?
A. They allowed you to make fifty bundles, and, if you made more than that, of course, they would pay you extra, but we never made more than fifty bundles.
Q. Did you get more than 2 1/2¢ apiece for them at any time?
A. Not to my recollection, I didn't; they paid 2 1/2¢.
Q. How often were you paid?
A. Every two weeks.
Q. Who kept account of the bundles?
A. Mr. Coles.
Q. He was your own man?
A. He was in the woods keeping account of the bundles.
Q. He kept the books, did he?
A. He might have; he kept account of the bundles in the woods; he takes the number of bundles in the woods.

Q. And put it down on paper, and kept the account of it?
A. Yes, sir.
Witness excused.

1214 MARTIN ALLSTON, (colored) a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by the Judge-Advocate.

Q. What is your name?
A. Martin Allston.
Q. Where do you live?
A. I live in Bluffton Township, Beaufort County, S. C.
Q. Did you work in the brush camp last year?
A. Yes, sir.
Q. Who for?
A. For Mr. Willie Welsh and Mr. Coles.
Q. What were you doing?
A. I worked on the mat one day, and I worked the balance of the two weeks in the brush work.
Q. You only worked there two weeks?
A. Yes, sir.
Q. What doing?
A. Tying brush bundles.
Q. How many men were at work in making up a bundle of brush? How many men did it take to make a bundle?
A. Three men; sometimes two.
Q. How much were you paid for making these bundles?
A. 2 1/2¢ a bundle.
Q. That was for the whole bundle?
A. Yes, sir.
Q. To be divided among the three men?
A. Yes, sir.
Q. How many did you make in one day?
A. Some days I could make up to 25 and some days up to 100,—depends upon the brush. If the brush was sticky, and it was hard to get into it, we made but very little that day, and some days, when we could get soft brush, of course, we had a good day's work.
Witness excused.

1215 JOHN W. O. STERLY, a witness for the prosecution, previously sworn, recalled, testified as follows:

Direct Examination by the Judge-Advocate.

Q. Did you find any evidence of any special report submitted by Capt Carter during the contract of 1892, Savannah Harbor, indicating an excess beyond the estimate of the quantities of brush mattress

A. No, sir; I did not find any.

Q. It is not contained in any of the reports?

A. No, sir.

Q. Did the monthly reports made by the accused give summaries of the amount previously used?

A. The monthly reports gave the summaries during the months done, but not of previous months.

Q. Have you been able to find any reports, monthly or special, informing the Chief of Engineers or the Division Engineer, of the fact that the estimated amount of brush mattresses was being exceeded?

A. No, sir; I have not found any such report; there is no such report.

Q. There is no such report?

A. No, sir.

Q. There has been no such report.

Q. Have you the monthly reports of Capt. Carter with you for the months of August and September, 1893?

A. Yes, sir. (Handing the Judge-Advocate the papers).

Judge-Advocate: I offer in evidence two monthly reports of the accused for August and September, 1893. Report of operations for the month of September 1893, for Improving Harbor at Savannah, Ga., and Money Statement. The report of operations sets forth that "Jetty work, under contract with the Atlantic Contracting Company, and dredging, under contract with P. Sanford Ross, were continued during the month.

"Four of the large stone and brush barges and two of
1216 the largest dredges are still in the marsh, where they were driven by the storm of August 27th," and then states the amount of work done on the Marsh Island training wall, and that there were placed in the North Long Island training wall 26,293.33 square yards of mattresses

from 30 to 40 feet wide, which were loaded with 1,111.17 cubic yards of stone.

"In all, there were placed in the work during the month:

573 piles, making a linear advance of pile work 2,305 feet;

3 piles, making 1 cluster of fender piles;

32,007.77 square yards of mattresses;

3,686.36 cubic yards of stone;

12,945.33 cubic yards of fascines.

That is for September. In the summary of the August report, it is stated that there were placed in the work during the month:

717 piles, making a linear advance of pile work of 2,927 feet.

120 piles, making 60 groups of tie piles.

73,614.05 square yards of mattresses.

9,883.98 cubic yards of fascines.

5,067.20 cubic yards of stone.

Copies of these reports will be attached to the record, and marked Exhibits Nos. 110 and 111.

Q. (Continuing examination) What was the total amount of mattresses used under that contract up to September, 1893,—make it to include September, 1893?

A. 374,497 square yards of mattresses.

Q. What was the estimate of mattresses to be used? What amount was used to canvass bids?

A. 200,000 square yards.

Q. This is the big contract I am speaking of?

A. 350,000 square yards.

Q. Referring now to the contract of October 8th, 1896; have you looked thoroughly, as I asked you to the other day, to see if any modification of either of those contracts, 1217 Cumberland Sound or Savannah Harbor, have been authorized?

A. Yes, sir; I have looked.

Q. There is no evidence of any such authority?

A. No, sir.

Q. No evidence of any modification having been made?

A. I didn't see any.

Q. Or report?

A. I didn't see any report.

Q. Any reference to any divergence from the project for Cumberland Sound of the Board of Engineers of December, 1895?

A. No, sir.

Q. Take the contract of Charles C. Ely for Brunswick Harbor in 1889; did you find any correspondence between the contractor and the officer in charge concerning the carrying on of the work?

A. No, sir; except that the articles of Agreement were sent to him for signature, but nothing in regard to the carrying on of the work.

Q. Had Mr. Ely ever had a contract before that time?

A. He had had no jetty contract; he may have had a dredging contract but I don't think he had.

Q. No letter of instruction to him, or to others about the work, that you could find in the records. Did any question of difference arise in relation to the execution of the works,—any dispute?

A. No, sir.

Q. There was no correspondence at all in regard to the execution of the work?

A. No, sir.

Q. Have you the pay-roll for Ft. Pulaski, 1886?

A. Pay-roll for 1886?

Q. April, 1886?

A. The pay-roll is in the office boxed up with Gen. Gillmore's pay-rolls; I have in a copy book a copy of the time sheet.

1218

Q. Did you find the names of Thos. H. Harvey, Jno. F. Gaynor and Wm. H. Walsh on that roll?

A. That is copied in the Savannah Harbor book.

Q. You do find that there?

A. Yes, sir.

Q. You have it there?

A. No, sir; Capt. McClure has that book.

Q. Page 163; do you find the name of Wm. H. Walsh there?

A. Yes, sir.

Q. How was he employed?

A. As a laborer.

Q. At what rate of compensation?

A. 15c per hour for 100 hours, $15.00,—Preservation and Repair of Fortifications, Fort Pulaski.

Q. Look at that large table again that you brought with you, and tell me when John F. Gaynor commenced and finished at Fernandina, contract of 1891?

A. John F. Gaynor finished at Fernandina on the 14th of November, 1891.

Q. When did he begin, does it show?
A. On the 23rd of June, 1891.
Q. When did Wm. H. Walsh begin his contract, at Ft. Clinch?
A. He began on the 1st of October, 1891.
Q. Where is Ft. Clinch?
A. About three miles from Fernandina.
Q. Were any letters written to Walsh in regard to that contract?
A. Papers were forwarded to him,—contract papers were forwarded to him.
Q. No letters of instruction or letters in regard to the work going on?
A. No, sir.
Q. There are none to be found?
1219 A. No, sir.
Q. You have looked for them?
A. Yes, sir; not in regard to the execution of the work, but I think in the letter notifying him of the acceptance of the bid, that he was told he might prepare, and get his plant ready.
Q. Look at page 76, Fort Clinch Letter Book?
A. (Witness handed Judge-Advocate the book, and page requested.)
Judge-Advocate: I offer in evidence and read from, page 76, Ft. Clinch Letter Book:

"United States Engineer Office,
"Savannah, Ga., July 16, 1891.

"Mr. Wm. H. Walsh,
"Fernandina, Fla.

"Sir:

"I have to inform you that your bid of the 10th inst., for constructing spur jetties at Fort Clinch, Florida, has been accepted at the following prices:

"Brush Mattresses,	$ .99 per square yard.
"Brush fascines,	1.57 per cubic yard.
"Stone,	3.59 per cubic yard.

"You may proceed to put your plant in proper condition for doing this work, pending the preparation of articles of agreement and bonds.

"Very respectfully,
"Your obedient servant,
"O. M. CARTER,
"Capt., Corps of Engrs., U. S. A."

Also from page 80, same book:

"United States Engineer Office,
Savannah, Ga., July 20, 1891.

"Mr. Wm. H. Walsh,
"Fernandina, Fla.
"Sir:

1220 "I transmit herewith, articles of agreement in quintuplicate and bonds in triplicate, for work of constructing spur jetties near Fort Clinch, Florida. Please have them properly filled out at the earliest opportunity and then return them to this office by registered mail.

"Very respectfully,
"Your obedient servant,
"O. M. CARTER,
"Capt., Corps of Engrs., U. S. A.

"(8 enclosures)"

Marked in pencil: "Returned O. K. July 27, 1891."

Also from page 85 of the same book:

"United States Engineer Office,
"Savannah, Ga., Aug. 26, 1891.

"Mr. Wm. H. Walsh,
"Fernandina, Florida.
"Sir:

"There is sent herewith, one copy of articles of agreement for constructing spur jetties near Fort Clinch, Florida. This has been approved by the Chief of Engineers, U. S. Army, under date of August 7, 1891.

"By direction and during the absence of Capt. Carter:—
"Very respectfully,
"Your obedient servant,
"M. A. CONNELLY,
"Clerk.

"(One enclosure)".

Q. (Continuing examination, and handing witness paper) What is that?

A. That is a letter transmitting check to Mr. Walsh.

Judge-Advocate: This is offered in evidence as the payment to Wm. H. Walsh, enclosing a check to Fernandina, Fla., sent by Capt. Carter,—a check for $11,899.71, and the receipt at Georgetown, S. C., dated December 3rd, 1891, "Re-
1221 ceived the above check. Wm. H. Walsh." The communication is sent to Mr. Walsh signed, "O. M. Carter, Capt., Corps of Engrs.", with a "Cy"; evidently sent by Connolly.

Q. (Continuing examination) What was the total amount appropriated for Savannah Harbor in 1892; that is the continuous contract?

A. $3,500,000.

Q. How much of that was spent for jetty work?

A. $2,110,869.53.

Q. And how much was spent for dredging?

A. For dredging was spent, $896,807.73.

Q. How many cubic yards of material was dredged?

A. 5,605,048.3 cubic yards.

Q. How much is provided for dredging in the contract of 1896, in Savannah Harbor?

A. 500,000 cubic yards, but that may be increased to 1,250,000 cubic yards, including the 500,000, should the construction work require more than one year before it is completed.

Q. Now, look at Cumberland Sound Book, N. 1; look and see if any letters were written to Mr. Bangs in regard to work in Cumberland Sound in 1894. When were bids accepted for that work,—page 434?

A. On October 4, 1894.

Q. When were the articles of agreement transmitted? Page 436.

A. On the 6th of November, 1894.

Q. When were the contract papers transmitted? page 444.

A. On the 27th of November, to Mr. Bangs.

Q. Do you find any letter on file from Mr. Bangs?

A. No, sir.

Q. Where were the contract papers signed?

A. The contract papers were signed in Savannah.

Q. Were you present?

A. Yes, sir.

Q. Did you witness the signatures?

A. I witnessed Mr. Bangs' signature.

Q. You saw him write it?

1222 A. Yes, sir.

Q. Look at the table, and see when work began under Mr. Bangs' contract and when it closed?

A. It began on the 28th of November, 1894, and closed on the 24th of June, 1895.

Q. In the period intervening between those dates, were any communications sent to Mr. Bangs aside from those having relation to the signing of the contract?

A. I don't know whether checks were sent; no other communications.

Q. No instructions or criticism of the work?

A. No, sir.

Q. Were any letters written to Mr. Walsh in regard to the Savannah River work above Augusta in 1892? That is the book we are waiting for, is it not?

A. Yes, sir; that is the book.

Q. Then we will go to the Bangs contract of 1888, for Cumberland Sound, page 438, No. 3 Miscellaneous?

A. On the 12th of January, 1889.

Q. The bid was accepted?

A. Yes, sir.

Q. Anson M. Bangs?

A. Anson M. Bangs, Fayetteville.

Q. When were the contract papers transmitted?

A. On the 12th of January,—on the same date.

Q. When were the articles of agreement returned? Look at page 10, Miscellaneous No. 4.

A. On the 24th of January, 1889.

Q. What is that?

A. It is a letter to Mr. Bangs on the 24th of January, 1889, returning the articles of agreement that they may be properly filled out.

A. Look at Page 38, the same book?

1223 A. That is a letter to Ansom M. Bangs of January 29, 1889. It is a letter stating that, through a clerical inadvertence, an error has been made. "In the Contractor's Bond the certificates as to the liability of each surety can be sworn to by them before a notary public.

Q. Look at page 97 of the same book?

A. On Feb'y 9, 1889, the contractor's bond is returned to him. "It does not appear that the postmaster at Fayetteville has any authority to administer an oath."

Q. Look at C. S. 7, 1889; what is that?

A. That is a telegram from John G. Smith, Fernandina, Fla., to Lieut. Carter.

Q. Read it.

A. (Witness reading) "Lieut. Carter, Savannah, Ga. Weather bad. Want about four hundred feet to deep water. Can you let me work deep water. In short blocked with material." Jno. G. Smith."

Q. Now look at page 460, Miscellaneous No. 4.

A. (Reading) "Paret, U. S. Engineer Office, Fernandina, Fla. Contractor wishes to work in deep water temporarily. Can this be allowed without damage to the Government's interests? Telegraph answer. Carter, Engineers. Official Business."

Q. Who was that sent to?

A. Paret.

Q. Who was Paret?

A. Assistant Engineer in local charge at Fernandina.

Q. Look at C. S. 8, 1889.

A. This is an answer from Paret, a telegram in answer to this one. "Fernandina, Fla., April 19, 1889. Lt. Carter, Savannah, Ga. No such emergency existing. Contractor might have such permission if not too general. Paret."

Q. Page 76-77, Miscellaneous No. 5?

A. Pages 76 and 77, is a letter addressed to Anson M. Bangs, Fayetteville, dated May 4, 1889, transmitting a check and the vouchers.

1224 Q. Fayetteville, in what State?

A. New York.

Q. Look at Page 308, same Book.

A. Page 308, June 7, 1889, transmitting a check for $8,237.18, for jetty work done in May at Cumberland Sound.

Q. Transmitting to whom?

A. Anson M. Bangs, Richmond, Me.

Q. Look at page 311?

A. That is a press copy of voucher for $8,237.18, sent to Bangs for signature.

Q. Now, page 431, same book?

A. It is a press copy of voucher for Anson M. Bangs, sent to Richmond, Me., for $9,473.08.

A. Now, take the Savannah River, above Augusta, Book. When was work begun there; that is, under the Walsh contract?

A. On the 14th of October, 1892, and ended on the 26th of June, 1893.

Q. Did you find any letter on file from Mr. Walsh in regard to that work?

A. No other letters but those transmitting the contract papers.

Q. Look at page 28, S. R. above Augusta?

A. It is a letter notifying Mr. Walsh that the contract has been awarded him.

Q. Page 41, what pencil mark is that?
A. "Delivered O. K."
Q. Whose writing is that?
A. Mr. Connolly's.
Judge-Advocate: I offer in evidence, and read:

"United States Engineer Office,
Savannah, Ga., Nov. 16, 1892.

"Mr. William H. Walsh,
"Fernandina, Fla.
"Dear Sir:

"Herewith please find copy of contract executed with 1225 you, for improving Savannah River, above Augusta, Georgia, approved by the Chief of Engineers, U. S. Army, November 9, 1892.

Very respectfully yours,
O. M. CARTER,
"Capt., Corps of Engrs., U. S. A.

"(One enclosure)".

Marked in pencil, as the witness testified, "Delivered O. K.", in the handwriting of Mr. Connolly.

Q. Now look at page 47, same book?
A. (Witness handed Judge-Advocate Book, and page)
Judge-Advocate: (Reading)

"United States Engineer Office,
Savannah, Ga., May 25, 1893.

"Mr. William H. Walsh,
"Fernandina, Fla.
"Sir:

"You will prepare to resume work on the upper Savannah River not later than Monday, May 29, 1893, as the terms of your contract require that all work on that River shall be completed on or before the 30th of June, 1893.

"Very respectfully,
"Your obedient servant,
"O. M. CARTER,
"Capt., Corps of Engrs., U. S. A."

Q. (Handing witness paper) Do you know whose handwriting that is?
A. By comparing this with records on file, I should say it is the handwriting of B. D. Green.
Q. What is the paper? What is the character of the paper? What is its brief?
A. "Gaynor, Jno. F. will furnish brush fascines, and will

level rock on dams—for raising—for one dollar and ten cents per cub. yd."

1226 Judge-Advocate: I offer in evidence and read:

"Savannah, Ga., Dec. 3, 1886.

"Lieut. O. M. Carter,
"Corps of Engrs., U. S. A.
"Savannah, Ga.

"Lieutenant:

"In reply to your inquiry as to the cost of brush fascines for levelling dams already built and the levelling the rock to prepare dams for raising, I beg leave to say that I will do this preparatory work, and furnish the brush in place as required, for One dollar and ten cents ($1.10) per cubic yard. I wish to say that, considering the greater distance brush has to be brought, and its scarcity, this price is twenty per cent below the price last year.

"Very respectfully yours,
"JOHN F. GAYNOR."

"1st indorsement.
"United States Engineer Office,
"Savannah, Ga., Dec. 3, 1886.

"Respectfully forwarded to,
"Col. Q. A. Gillmore, Corps of Engrs., U. S. A.

"In the repairs to dams 26 and 33, as well as in the execution of work upon the Fig Island Jetty, and the various closure dams, it will be advantageous to use brush fascines instead of stone up to a height of from 3 to 5 feet above low water, and the enclosed communication from Mr. Gaynor is in response to my inquiry as to the price for which he would do this work. The fascines are to be made of live brush, well trimmed, the butts placed in alternate directions, and closely choked. These fascines will be from 10 to 20 feet long, from 12 to 15 inches in diameter, and tied with from 4 to 6 bands of wire or tarred rope, to be placed as the Engineer in charge shall approve.

They are to be placed in the work singly or in mats, in
1227 such places, quantities and manner as may be directed by the Engineer in charge.

"When made into mats, the fascines will be packed together, and secured by binding poles, joined by ties of wire or tarred rope, not more than two feet apart, the form and dimensions of mats and the method of their construction to be such as the Engineer in charge shall approve. For measurement, the fascines will be piled up either on shore or on a boat where they can be accurately measured. The price

will include levelling the dams preparatory to beginning work, and in general, whatever in the opinion of the Engineer in charge may be necessary to secure a good job.

"I do not think the price asked by Mr. Gaynor ($1.10 per cub. yd.) is excessive.

"Should this proposition be accepted, I desire to begin work on dams 26 & 33 at once, in order to complete the work in that section, while dams 28 and 35 are being constructed.

"O. M. CARTER,
"*1st Lt. Corps of Engrs., U. S. A.*"

Pencil memorandum on the brief: "Supplemental Articles of Agreement executed Dec., 1886. Letter to C. of E. Dec. Reply No."

Q. In whose handwriting is that pencil memo.?
A. James Gillmore's.
Q. James Gillmore?
A. Yes, sir.
Q. A clerk in the office here?
A. No, sir; he was in Gen. Gillmore's office.
Q. In New York City?
A. Yes, sir; he wrote that "Supplemental Articles of Agreement executed Dec., 1886."
Q. What you have just read was written by Mr. Gillmore, New York City
A. Yes, sir.
Q. And that memorandum down there, "Letter to C. of E."?
A. It is all written by him; it was written in the office in N. Y.

1228 Judge-Advocate: I desire to submit to the Court the letters from B. D. Green, which were in evidence this morning through the testimony of Capt. Smith, which he identified as having received from him, and this letter signed John F. Gaynor, Savannah, Ga. Dec. 3, 1886.

Q. (Continuing examination) That supplemental contract for fascines at $1.10 per cubic yard was supplemental to the contract where mattresses were paid for by the square yard, or do you remember?
A. I don't remember.
Q. Do you remember the contract where the mattresses were 38c per sq. yard?
A. I don't remember that.
Q. Is it not on your chart?
A. I don't remember which contract it was.

Q. I think it is on your chart there. Your chart does not go back far enough for that?
A. No, sir.
Q. You can get that information by morning?
A. Yes, sir.
Q. Do you remember anything about that contract of 1886,—the Gaynor contract?
A. I have got some notes here; it maybe among those.
Q. Would that show what was paid for mattresses per sq. yard?
A. No, sir; I haven't got that.
Q. Would it show how many sq. yards of mattress were used under that contract?
A. I have the record in the office.
A. Judge-Advocate: I will ask you to get that tomorrow morning; also, the information about how many cubic yards of fascines were used in that contract, and give the supplemental contract at $1.10, and how many sq. yards of mattress were used at the original price.

1229 *Cross-Examination by Mr. Rose.*

Q. I understood you to say that the monthly reports did not show the amount of work done the previous month on any of these contracts?
A. The monthly reports of operation show the amount of work done during the month.
Q. But not the amount of work done before?
A. Not the summary.
Q. Then, I understand you to say that there was nothing on record to show the amount of work done up to the time of making the report, is that right?
A. Nothing on file.
Q. Showing a summary of the work done up to the time of making that report?
A. No, sir.
Q. There is nothing of that kind?
A. Yes. sir.
Q. What is that?
A. That is the Engineers estimate, which is filed with the monthly report of operations, but I was asked if there was anything that goes to the Chief of Engineeers.
Q. There is nothing that goes from the office of the En-

gineer in charge to the Chief of Engineers that shows a summary of the work done?

A. Yes, sir; the annual report.

Q. When is that sent?

A. At the end of the fiscal year.

Q. Was one sent with reference to what is called the big contract, in 1892?

A. Yes, sir.

Q. When was the first one sent after that contract was entered into?

A. 1st of July, 1893.

Q. And there was one sent on the 1st of July, 1894?

1230 A. Yes, sir; every year.

Q. The work wasn't then complete, was it?

A. No, sir.

Q. These reports are printed after they are sent to the Chief of Engineers?

A. Yes, sir.

Q. And you have sent reports for 1893 and 1894?

A. Yes, sir.

Mr. Rose: (Addressing Judge-Advocate) You do not wish me to identify them any further?

Judge-Advocate: No, sir.

Q. (Mr. Rose continuing) Will you take your chart there, and tell me the amount of mats that were used to canvass bids by?

A. Which contract; the big contract?

Q. Savannah Harbor, 1892?

A. 350,000 sq. yards.

Q. And that contract was entered into when?

A. On the 28th of October, 1892.

Mr. Rose, I read, and wish to have spread upon the record, from the Annual Report of the Chief of Engineers, 1893, Appendix N., page 1540, where it states:

"Altogether there were, therefore, put into the various works during the year 63,688.65 cubic yards of fascines, 240,708.95 sq. yards of mattresses," and the rest relates to other subjects.

I also read from Report of 1894, Appendix N, page 1134, in which it states with reference to Savannah Harbor work:

"Altogether there were, therefore, put into the various works during the fiscal year by the Atlantic Contracting Company: Brush mattresses, 699,536.65 sq. yards."

Q. (Mr. Rose continuing examination) And the amount, as I understood you, used to canvass bids by, was 350,000.

A. Yes, sir.

1231 Q. What was the amount of brush fascines, cubic yards, that was used to convass bids by, do you remember?

A. 300,000 cubic yards of fascines.

Q. The amount of sawed timber?

A. 800,000 feet.

Mr. Rose: I read from the Annual Report of the Chief of Engineers, 1894, Appendix N, page 3, dated Washington, Sept. 29, 1894. The statement is therein made that "During the fiscal year just closed there was used * * * 699,536.65 square yards of brush mattresses."

The same figures that are given in Capt. Carter's report, showing that the Chief of Engineers had these figures before him at that time. This is in his report to the Secretary of War.

Witness excused for the day.

The President: If there are no objections, Court will stand adjourned until 11.00 o'clock tomorrow morning.

(Court adjourned at 3.00 o'clock p. m.)

THOMAS F. BARR
Col. & Asst. Judge Adv. Genl.
Judge Advocate.

1232 United States Court Room,
Savannah, Ga.,
February 9th, 1898.

Court met pursuant to its adjournment of yesterday at 11.00 o'clock a. m.

Present:

All the members of the Court and the Judge-Advocate.

The accused, his Counsel, and the Reporter, W. O. Tarver, were also present.

The President: Court will come to order.

JOHN W. O. STERLY, a witness for the prosecution, previously sworn, resumed the stand, and testified as follows:

Direct Examination by the Judge-Advocate.

Q. I asked you yesterday what was the price per square yard in Mr. Jno. F. Gaynor's contract of 1886, for Savannah Harbor?

A. Thirty eight cents per square yard.

Q. What was the amount subsequently paid per cubic yard for fascines

A. $1.10.

Q. What was the quantity of mats, the number of square yards used to canvass bids for that contract?

A. From 60,000 to 90,000 square yards of mats.

Q. And what the number of cubic yards of stone?

A. From 20,000 to 25,000 cubic yards of stone.

Q. What was the price per cubic yard of stone?

A.. $3.00 per cubic yard.

Q. Have you the supplemental contract?

A. Yes, sir.

Judge-Advocate: This paper, the supplemental contract of Dec. 22, 1886, between Col. Gillmore and John F. Gaynor, for Constructing Training Walls, etc., in Savannah Harbor and River, Ga, has been produced and read over before in
1233 the progress of this case, but, to complete the record, I shall have a copy of it attached to the record marked Exhibit No. 112.

Q. (Continuing examination) How many square yards of mats were used under that contract?

A. 40,980.45 square yards.

Q. Amounting in money to what?

A. To $15,572.57.

Q. How many cubic yards of stone?

A. 17,670.98 cubic yards of stone.

Q. Amounting in money to how much?

A. To $53,012.94.

Q. How many cubic yards of fascines?

A. 39,871.36 cubic yards of fascines, amounting to, in money, $43,858.50.

Q. What was the aggregate amount of money paid on that contract?

A. $112,444.01.

Q. When did work begin upon it?

A. Work began on the 28th of November, 1886.

Q. And closed when?

A. Closed on the 3rd of July, 1887.

Cross-Examination by Mr. Rose.

Q. Do you know whether there was a contract prior to the supplemental contract of 1886 for fascines?

A. Yes, sir.

Q. In 1884 or 1885?
A. In 1885?
Q. Yes; the supplemental contract was in 1886?
A. Yes, sir.
Q. Now in 1884 or 1885, was there any other contract for fascines?
A. There were fascines used under the 1884 contract, but the contract does not give any price for fascines.
Q. You are sure of that?
1234 A. That is another contract.
Q. Do you know whether there were any fascines paid for under the contract of 1884?
A. Under the 1884 contract?
Q. Do you know?
A. No, sir; I don't know; it was before my time.
Witness excused.

Judge-Advocate: I now propose, may it please the Court, to offer in evidence and read the copies of checks, with their endorsements, sent by Mr. Jordan, and certified to by him as Assistant Treasurer.

Mr. Blair: If the Court please, I would like to ask the Judge-Advocate if there is any other, or different, information contained in these checks than what was read to the Court in the beginning. I find by an inspection of the record that twenty type-written pages were taken up in a description of these checks, and I submit that, unless there is some different information to be conveyed by a second reading that such reading might be dispensed with.

Judge-Advocate: I am not going to read the entire check, but only the numbers, the amounts and the endorsements.

Mr. Blair: That was all read before.

Judge-Advocate: No, sir; the endorsements were not read, but only the payment of the checks.

The Judge-Advocate then read as follows from copies of checks signed by "O. M. Carter, Engineer U. S. A., Capt. Corps of Engrs., U. S. A."

"No. 200,308, December 31, 1892, Pay to the Order of The Atlantic Contracting Co., John F. Gaynor, President, $20,000, paid Jan. 3, 1893, endorsed The Atlantic Contracting Co., John F. Gaynor, President, E. Burns, C. C. O. C.;" "meaning cash paid over the counter, which Mr. Jordan testified to.

Attached to the Record marked Exhibit 113.

1235 "No. 200,302, Dec. 16, 1892, Pay to the order of the Atlantic Contracting Co., John F. Gaynor, President, $8,507.45. Paid Dec. 20, 1892." Endorsed: "Pay to the order of Wm. T. Gaynor, The Atlantic Contracting Co., John F. Gaynor, President. Wm. T. Gaynor. Pay C. H. Patterson, Cashier, or order, Jas. H. Hunter, Cash. The Fourth National Bank of the City of New York, By F. M. Hinkle, Atty." Attached to the record marked Exhibit 114.

"No. 200,268, Dec. 3rd, 1892, Pay to the order of the Atlantic Contracting Co., John F. Gaynor, President, $5,000.00. Paid Dec. 5, 1892." Endorsed: "The Atlantic Contracting Co., John F. Gaynor, President. Pay to C. H. Patterson, Cash, or order, Jas. H. Hunter, Cash. The Fourth National Bank of the City of New York, by R. C. Thorp, Atty." Attached to the record marked Exhibit 115.

"No. 200,265, Nov. 7, 1892, Pay to the order of the Atlantic Contracting Co., John F. Gaynor, President, $3,265.61. Paid Nov. 21, 1892." Endorsed: "The Atlantic Contracting Co., John F. Gaynor President. Pay C. H. Patterson, Cash, or order. Jas. H. Hunter, Cash. The Fourth National Bank of the City of New York, by F. M. Hinkle, Atty." Attached to the record marked Exhibit 116.

"No. 200,312, Jan'y 10, 1893, Pay to the order of the Atlantic Contracting Co., John F. Gaynor, President, $25,416.81. Paid Jan'y 23, 1893." Endorsed: "Pay to the order of J. F. Gaynor, The Atlantic Contracting Co., John F. Gaynor, President. Pay Jas. H. Hunter, Cashier, or order, J. F. Gaynor. Pay C. H. Patterson, Cashier, or order, Jas. H. Hunter, Cashier. The Fourth National Bank of the City of New York, by F. M. Hinkle, Atty." Attached to the record marked Exhibit 117.

"No 200,322, Feb'y 4, 1893, Pay to the order of the Atlantic Contracting Co., John F. Gaynor, President, $37,722.83. Paid Feb'y 11, 1893." Endorsed: "21. Feb. 10, 1893: For deposit, The Atlantic Contracting Co., John F. Gaynor, President. Received payment through the New York Clearing House. American Exchange National Bank, Edward Burns, Cashier, Feb. 10, 1893." Attached to the record marked Exhibit 118.

1236 "No. 224,375, March 6, 1893, Pay to the order of the Atlantic Contracting Co., John F. Gaynor, President, $34,985.47. Paid March 14, 1893." Endorsed: "21, Mar. 13, 1893. The Atlantic Contracting Co., John F. Gaynor, President. Received payment through the New York Clear-

ing House. American Exchange National Bank, Edward Burns, Cashier, Mar. 13, 1893." Attached to the record marked Exhibit 119.

"No. 224,382, March 31, 1893, Pay to the order of the Atlantic Contracting Co., John F. Gaynor, President, $37,070.49. Paid April 14, 1893." Endorsed: "The Atlantic Contracting Co., John F. Gaynor, President. E. Burns, Cash." Pencil marked: "C. O. C.", meaning cashed over the counter. Attached to the record marked Exhibit 120.

"No. 224,385, April 3, 1893, Pay to the order of the Atlantic Contracting Co., John F. Gaynor, President, $20,584.51. Paid April 14, 1893." Endorsed: "The Atlantic Contracting Co., John F. Gaynor, President. E. Burns, C." and paid in cash over the counter. Attached to the record marked Exhibit 121.

"No. 224,386, April 3, 1893, Pay to the order of the Atlantic Contracting Co., John F. Gaynor, President, $3,493.72. Paid April 14, 1893." Endorsed: "The Atlantic Contracting Co., John F. Gaynor President. E. Burns, C." Paid in cash over the counter. Attached to the record marked Exhibit 122.

"No. 224,409, May 2, 1893, Pay to the order of the Atlantic Contracting Co., John F. Gaynor, President, $30,000.00. Paid May 9. 1893." Endorsed: "21. May 8, 1893. The Atlantic Contracting Co., John F. Gaynor, President. For deposit, John F. Gaynor. Received payment through the New York Clearing House, American Exchange Nat'l Bank, Edward Burns, Cashier, May 8, 1893." Attached to the record marked Exhibit 123.

"No. 224,417, May 31, 1893, Pay to the order of the Atlantic Contracting Co., Edward H. Gaynor, Treasurer, $6,105.69. Paid June 5, 1893." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor Treasurer. For Deposit, B. D. Greene, A. Carr, A. C." Attached to the record marked Exhibit 124.

1237 "No. 224,418, June 3rd, 1893, Pay to the order of the Atlantic Contracting Co., Edward H. Gaynor, Treasurer, $3,309.40. Paid July 31, 1893". Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treas. Pay National Park Bank on order for collection account of Southern Bank State of Ga., James Sullivan, Cashier. James Sullivan, Cashier: Received payment through the New York Clearing House? National Park Bank, Geo. S. Hickok, Cashier, Jul. 31, 1893." Attached to the record marked Exhibit 125.

"No. 224,439, July 3rd, 1893, Pay to the order of the Atlantic Contracting Co., Edward H. Gaynor, Treasurer, $3,595.38, paid July 11, 1893. Edward H. Gaynor, Treas., Correct, O. M. Carter, Capt., Corps of Engrs., U. S. A.", evidently certifying to the signature. Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treas. W. T. Gaynor. E. Burns, C.", and "C" in pencil. Attached to the record marked Exhibit 126.

"No. 224,437, July 3, 1893, Pay to the order of the Atlantic Contracting Co., Edward H. Gaynor, Treas., $3,000.00. Paid July 11, 1893. Edward H. Gaynor, Treas., Correct. O. M. Carter, Capt., Corps of Engrs., U. S. A." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treas. W. T. Gaynor. E. Burns, Cash." Pencil "C". Attached to the record marked Exhibit 127.

"No. 224,438, July 3, 1893, Pay to the order of the Atlantic Contracting Co., Edward H. Gaynor, Treas., $7,558.83. Paid July 11, 1893. Edward H. Gaynor, Treas., Correct. O. M. Carter, Capt., Corps of Engrs., U. S. A." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treas. W. T. Gaynor, E. Burns, C." with a "C" in pencil. Attached to the record marked Exhibit 128.

"No. 224,431, July 3, 1893, Pay to the order of the Atlantic Contracting Co., Edward H. Gaynor, Treas., $5,968.18. Paid July 11, 1893. Edward H. Gaynor, Treas., Correct. O. M. Carter, Capt., Corps of Engrs., U. S. A.". Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treas. W. T. Gaynor. E. Burns, C." Pencil "C". Attached to the record marked Exhibit 129.

1238 "No. 224,432, July 3, 1893, Pay to the order of The Atlantic Contracting Co., Edward H. Gaynor, Treas., $34,177.94. Paid July 12, 1893. Edward H. Gaynor, Treas., Correct, O. M. Carter, Capt., Corps of Engrs., U. S. A." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treas. For deposit, B. D. Greene. Received payment through the New York Clearing House, American Exchange National Bank, E. Burns, Cashier, July 11, 1893." Attached to the record marked Exhibit No. 130.

"No. 224,433, July 3rd, 1893, Pay to the order of the Atlantic Contracting Co., Edward H. Gaynor, Treas., $46,592.39. Paid July 11, 1893. Edward H. Gaynor, Treas., Correct. O. M. Carter, Capt., Corps of Engrs., U. S. A." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treas. W. T.

Gaynor. E. Burns, C.", with a pencilled "C". Attached to the record marked Exhibit 131.

"No. 224,449, August 3, 1893, Pay to the order of the Atlantic Contracting Co., Edward H. Gaynor, Treas., $39,075.00. Paid Aug. 7, 1893." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treas. E. Burns, Cash.", with pencilled "C. O. C." Attached to the record marked Exhibit 132.

No. 224,450, August 3, 1893, Pay to the order of the Atlantic Contracting Company, Edward H. Gaynor, Treasurer, $5,700.47. Paid Aug. 17, 1893." Endorsed: "The Atlantic Contracting Company, Edward H. Gaynor, Treas. Pay National Park Bank, or order, for collection account of Southern Bank State of Ga., James Sullivan, Cash. James Sullivan, Cashier. The National Park Bank, per W. C. Taylor, Attorney." Attached to the record marked Exhibit 133.

"No. 224,451, August 3, 1893, Pay to the order of the Atlantic Contracting Co., Edward H. Gaynor, Treasurer, $5,000.00. Paid Aug. 14, 1893." Endorsed: "The Atlantic Contracting Company, Edward H. Gaynor, Treasurer. Pay to the order of Eugene Kelly & Co., Southern Bank of the State of Ga., James Sullivan, Cashier. Eugene Kelly & Co.", pencilled "OC". The messenger in that case was the one that was identified by Terry, as you remember Mr. Jordan testified to. Attached to the record and marked Exhibit 134.

1239 "No. 224,461, September 1, 1893, Pay to the order of the Atlantic Contracting Co., Edward H. Gaynor, Treasurer, $77,975.00. Paid Sept. 7, 1893." Endorsed: "Edward H. Gaynor, The Atlantic Contracting Co., Edward H. Gaynor, Treas., 21, Sep. 6, 1893. W. T. Gaynor. E. Burns, Cash. Received payment through the Clearing House, per pro Am. Exch. Nat'l Bk., N. Y., J. A. Carr, A. C." Attached to the record marked Exhibit 135.

"No. 224,462, Sept. 1, 1893, Pay to the order of the Atlantic Contracting Co., Edward H. Gaynor, Treasurer, $4,500.00. Paid Sep. 26, 1893." Endorsed: "The Atlantic Contracting Company, Edward H. Gaynor, Treas. Pay National Park Bank, on order, for collection, account of Southern Bank State of Ga., James Sullivan, Cashier. James Sullivan, Cashier. Received payment through the New York Clearing House, National Park Bank, Geo. H. Hickok, Cashier. Sept. 26, 1893." Attached to the record marked Exhibit 136.

"No. 244,463, September 1, 1893, Pay to the order of The Atlantic Contracting Co., Edward H. Gaynor, Treas., $4,-

500.00. Paid Sep. 19, 1893." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treasurer. Pay National Park Bank or order for collection account of Southern Bank State of Ga., James Sullivan, Cashier. James Sullivan, Cashier. Received payment through the New York Clearing House, National Park Bank, Geo. S. Hickok, Cashier, Sep. 19, 1893." Attached to the record marked Exhibit No. 137.

"No. 224,502, October 2, 1893, Pay to the order of the Atlantic Contracting Co., Edward H. Gaynor, Treas., $5,554.84. Paid Oct. 9, 1893." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treas. Pay National Park Bank or order for collection account of Southern Bank State of Ga., James Sullivan, Cashier. James Sullivan, Cashier. Received payment through the New York Clearing House, National Park Bank, Geo. S. Hickok, Cashier. Oct. 9, 1893." Attached to the record marked Exhibit 138.

"No. 224,503, October 2, 1893, Pay to the order of The Atlantic Contracting Co., Edward H. Gaynor, Treas., $6,-1240 850.00. Paid Oct. 13, 1893." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treas. Pay National Park Bank or order for collection account of Southern Bank State of Georgia, James Sullivan, Cashier; James Sullivan, Cashier. Received payment through the New York Clearing House; National Park Bank, Geo. S. Hickok, Cashier. Oct. 13, 1893." Attached to the record marked Exhibit 139.

"No. 224,504, October 2, 1893, Pay to the order of the Atlantic Contracting Co., Edward H. Gaynor, Treas., $7,075.00. Paid Oct. 13, 1893." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treas. Pay National Park Bank or order for collection account of Southern Bank State of Ga.. James Sullivan, Cashier; James Sullivan, Cashier. Received payment through the New York Clearing House; National Park Bank, Geo. S. Hickok, Cashier; Oct. 13, 1893." Attached to the record marked Exhibit 140.

"No. 224,505, October 2nd, 1893, Pay to the order of the Atlantic Contracting Co., Edward H. Gaynor, Treas., $17,073.00. Paid Oct. 11, 1893." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treas. For Deposit, B. D. Greene. Received payment through the New York Clearing House; American Exchange National Bank, Edward Burns, Cashier, Oct. 11, 1893." Attached to the record marked Exhibit 141.

"No. 224,506, Oct. 2, 1893, Pay to the order of the Atlantic Contracting Co., Edward H. Gaynor, Treas., $19,000.00. Paid

Oct. 13, 1893." Endorsed: "The Atlantic Contracting Co.. Edward H. Gaynor, Treas. For Deposit, B. D. Greene. Paid Oct. 12, 1893; Am. Exch. Nat. Bank, New York. Received payment through the New York Clearing House; American Exchange Nat'l Bank, Edward Burns, Cashier; Oct. 13, 1893." Attached to the record marked Exhibit 142.

"No. 224,554, November 3, 1893, Pay to the order of the Atlantic Contracting Co., Edward H. Gaynor, Treas., $18,-000.00. Paid Nov. 8, 1893." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treas. For deposit, B. D. Greene. Received payment through the New York Clearing House; American Exchange Nat'l Bank, Edward Burns, 1241 Cashier; Nov. 8, 1893." Attached to the record marked Exhibit 143.

"No. 224,555, Nov. 3, 1893, Pay to the order of the Atlantic Contracting Co., Edward H. Gaynor, Treas., $14,000.00. Paid Feb. 12, 1894." Endorsed: "Pay to the order of W. T. Gaynor; The Atlantic Contracting Co., Edward H. Gaynor, Treas. Pay to the order of the American Exch. National Bank, W. T. Gaynor. Received payment through the New York Clearing House; American Exch. National Bank, Edward Burns, Cashier; Feb. 14, 1894." Attached to the record marked Exhibit 144.

"No. 224,599, Dec. 1, 1893, Pay to the order of the Atlantic Contracting Co., Edward H. Gaynor, Treas., $1,000.00. Paid March 9, 1894." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treas. Received payment through the New York Clearing House; American Exch. National Bank, Edward Burns, Cashier; Mar. 9, 1894." Attached to the record marked Exhibit 145.

"No. 224,600, Dec. 1, 1893, Pay to the order of the Atlantic Contracting Co., Edward H. Gaynor, Treas., $6,150.00. Paid Dec. 5, 1893." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treas. Pay National Park Bank or order for collection account of Southern Bank State of Ga., James Sullivan, Cashier; James Sullivan, Cashier. Received payment through the New York Clearing House; Nat'l Park Bank, Geo. S. Hickok, Cashier; Dec. 5, 1893." Attached to the record marked Exhibit 146.

"No. 224,601, Dec. 1, 1893, Pay to the order of the Atlantic Contracting Co., Edward H. Gaynor, Treas., $23,075.00. Paid Dec. 5, 1893." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treas. Received payment through the

Clearing House, perpro. Am. Exch. Nat'l Bk, N. Y., J. J. Bennett." Attached to the record marked Exhibit 147.

"No. 224,602, Dec. 1, 1893, Pay to the order of the Atlantic Contracting Co., Edward H. Gaynor, Treas., $40,000.00. Paid Dec. 5, 1893." Endorsed: "The Atlantic Contracting
1242 Co., Edward H. Gaynor, Treas. Received payment through the Clearing House, per pro. Am. Exch. Nat'l Bk, N. Y., J. J. Bennett." Attached to the record marked Exhibit 148.

"No. 224,650, January 5, 1894, Pay to the order of the Atlantic Contracting Co., Edward H. Gaynor, Treas., $1,982.00. Paid Jan. 9, 1894." Endorsed: "The Atlantic Contracting Co., E. H. Gaynor; Edward H. Gaynor, Treas. Pay National Park Bank or order for collection account of Southern Bank State of Ga., James Sullivan, Cashier; James Sullivan, Cashier. Received payment through the New York Clearing House; National Park Bank, Geo. S. Hickok, Cashier. Jan'y 9, 1894." Attached to the record marked Exhibit 149. On page 64 of this record, the amount of this check is given as $15,075.00. $15,075.00 appears, from copy of check, to be the amount of Check No. 224,651, which is more fully described in the paragraph immediately following.

"No. 224,651, January 5, 1894, Pay to the order of The Atlantic Contracting Co., Edward H. Gaynor, Treasurer, $15,075.00. Paid Jan. 9, 1894." Endorsed: "21, Jan. 8, 1894. The Atlantic Contracting Co., Edward H. Gaynor, Treas. W. T. Gaynor. Received payment through the New York Clearing House; American Exchange Nat'l Bank, Edward Burns, Cashier, Jan. 9, 1894." Attached to the record marked Exhibit 150.

"No. 224,695, Feb'y 2, 1894, Pay to the order of the Atlantic Contracting Co., Edward H. Gaynor, Treas., $30,000.00. Paid Feb'y 6, 1894." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treas. For Deposit, B. D. Greene. Received payment through the Clearing House, per pro Am. Exch. Nat'l Bank, N. Y., J. S. Carr, A. C." Attached to the record marked Exhibit 151. On page 65 of this record, it is stated that this check was paid Feb. 1st, instead of Feb. 6, as just read from copy of check.

"No. 224,696, Feb'y 2, 1894, Pay to the order of The Atlantic Contracting Co., Edward H. Gaynor, Treas., $24,000.00. Paid Feb'y 6, 1894." Endorsed: "The Atlantic Contracting

Co., Edward H. Gaynor, Treas. For Deposit, B. D. 1243 Greene. Received payment through the Clearing House, per pro. Am. Exch. Nat'l Bk, N. Y., J. S. Carr, A. C." Attached to the record marked Exhibit 152.

"No. 224,697, Feb'y 2, 1894, Pay to the order of the Atlantic Contracting Company, Edward H. Gaynor, Treas., $1,000.00. Paid March 9, 1894." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treas. Received payment through the New York Clearing House, American Exchange National Bank, Edward Burns, Cashier, Mar. 9, 1894." Attached to the record marked Exhibit 153.

"No. 224,730, March 1, 1894, Pay to the order of The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, $5,555.22. Paid Mar. 10, 1894." Endorsed: "The Atlantic Contracting Company, Edward H. Gaynor, Treas. Pay National Park Bank or order for collection account of Southern Bank State of Ga., James Sullivan, Cashier; James Sullivan, Cashier. Received payment through the New York Clearing House; Nat'l Park Bank, Geo. S. Hickok, Cashier, Mar. 10, 1894." Attached to the record marked Exhibit No. 154.

"No. 224,731, March 1, 1894, Pay to the order of The Atlantic Contracting Co., Edward H. Gaynor, Treas., $1,000.00." On the face of the check it appears to have been paid Mar. 9, 1894. Endorsed: "The Atlantic Contracting Company, Edward H. Gaynor, Treas. Received payment through the New York Clearing House, American Exch. National Bank, Edward Burns, Cashier, Mar. 9, 1894." Attached to the record marked Exhibit 155.

"No. 224,732, March 1, 1894, Pay to the order of The Atlantic Contracting Co., Edward H. Gaynor, Treas., $24,075.00. Paid Mar. 6, 1894." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treas. For deposit, B. D. Greene. Received payment through the New York Clearing House, American Exchange National Bank, Edward Burns, Cashier, Mar. 6, 1894." Attached to the record marked Exhibit 156.

"No. 269,217, July 7, 1894, Pay to the order of The Atlantic Contracting Co., Edward H. Gaynor, Treasurer, $90,-1244 000.00. Paid July 10, 1894." Endorsed: "The Atlantic Contracting Company, Edward H. Gaynor, Treasurer. For Deposit, B. D. Greene. 21 July 19, 1894. Received payment through the Clearing House, per pro. Am. Exch. Nat'l Bk, N. Y., J. J. Bennett." Attached to the record marked Exhibit 157.

"No. 269,218, July 7, 1894, Pay to the order of The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, $80,000.00. Paid July 10, 1894." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treas. Received payment through the Clearing House, per pro. Am. Exch. Nat'l Bk, N. Y., J. J. Bennett." Attached to the record marked Exhibit 158.

"No. 269,219, July 7, 1894, Pay to the order of the Atlantic Contracting Company, Edward H. Gaynor, Treasurer, $12,000.00. Paid July 9, 1894." Endorsed: "The Atlantic Contracting Company, Edward H. Gaynor, Treasurer. W. T. Gaynor. Pay National Park Bank or order for collection account of Southern Bank State of Ga., James Sullivan, Cashier; James Sullivan, Cashier. Received payment through the New York Clearing House, National Park Bank, Geo. S. Hickok, Cashier, July 9, 1894. The National Park Bank, per Attorney." Attached to the record marked Exhibit 159.

"No. 269,220, July 7, 1894, Pay to The Atlantic Contracting Company, Edward H. Gaynor, Treas., $4,000.00. Paid Aug. 10, 1894." Endorsed: "The Atlantic Contracting Company, Edward H. Gaynor, Treasurer. For collection acct. Boston Safe Deposit & Trust Co., Boston, Mass., F. C. Miles, Treasr. The Trust Nat'l Bank, N. Y., Aug. 10, 1894, Paid. For collection through the New York Clearing House; The First National Bank of New York, by C. A. Hoag, Atty." Attached to the record marked Exhibit 160.

"No. 269,251, Sept. 8, 1894, Pay to the order of The Atlantic Contracting Company, John F. Gaynor, President, $2,000.00. Paid Jan. 5, 1895. John F. Gaynor, Correct, O. M. Carter, Capt., Corps of Engrs., U. S. A." Endorsed: "Pay to the order of W. T. Gaynor, The Atlantic Contracting Co., John F. Gaynor, President. W. T. Gay-
1245 nor. Received payment through the New York Clearing House, American Exch. National Bank, Edward Burns, Cashier, Jan. 5, 1895. 21 Jan. 4, 1895." Attached to the record marked Exhibit 161.

"No. 269,252, Sept. 8, 1894, Pay to the order of The Atlantic Contracting Company, John F. Gaynor, President, $5,000.00. Paid Sept. 11, 1894." Endorsed: "The Atlantic Contracting Company, John F. Gaynor, President. For Deposit, B. D. Greene. Received payment through the Clearing House, per pro. Am. Exch. Nat'l Bk, N. Y., J. J. Bennett." Attached to the record marked Exhibit 162.

"No. 269,253, Sept. 8, 1894, Pay to the order of The At-

lantic Contracting Co., John F. Gaynor, President, $43,328.17. Paid Sept. 19, 1894." Endorsed: "The Atlantic Contracting Company, John F. Gaynor, President, W. T. Gaynor. Pay to the order of George S. Hickok Cashier, for collection and remittance of proceeds on account of the Commercial Bank, Syracuse, N. Y., Anthony Lamb, Cashier; Anthony Lamb, Cashier. Received payment through the New York Clearing House; Nat'l Park Bank; Geo. S. Hickok, Cashier. Sep. 19, 1894." Attached to the record marked Exhibit 163.

"No. 269,254, Sept. 8, 1894, Pay to the order of The Atlantic Contracting Co., John F. Gaynor, President, $45,-817.23. Paid Sept. 19, 1894." Endorsed: "The Atlantic Contracting Company, John F. Gaynor, President, W. T. Gaynor. For deposit in Fourth Nat'l Bank account of the Mercantile Trust Co. Pay to the order of H. C. Deming Treas., for collection and remittance of proceeds on account of the Commercial Bank, Syracuse, N. Y., Anthony Lamb, Cashier; Anthony Lamb, Cashier. For Deposit in Fourth National Bank account of the Mercantile Trsuct Co., E. L. Montgomery. The Fourth National Bank of the City of New York, by F. M. Hinkle, Atty." Attached to the record marked Exhibit 164.

"No. 269,255, Sept. 8, 1894, Pay to the order of the Atlantic Contracting Co., John F. Gaynor, President, $52,-510.75. Paid Sep. 10, 1894." Endorsed: "The Atlantic Contracting Company, John F. Gaynor, President. J. 1246 S. Carr, A. Cash." pencil marked "C. O. C.", which the Court will remember Mr. Jordon testified meant that it was paid in cash over the counter. Attached to the record marked Exhibit 165

"No. 269,256, Sept. 8, 1894, Pay to the order of The Atlantic Contracting Co., John F. Gaynor, President, $55,-683.74. Paid Sep. 11, 1894." Endorsed: "The Atlantic Contracting Co., John F. Gaynor, President. For Deposit, B. D. Greene. Received payment through the Clearing House, per pro. Am. Exch. Nat'l Bk., N. Y., J. J. Bennett." Attached to the record marked Exhibit 166.

"No. 269,257, Sept. 8, 1894, Pay to the order of The Atlantic Contracting Co., John F. Gaynor, President, $58,-735.11. Paid Sep. 18, 1894." Endorsed: "The Atlantic Contracting Co., John F. Gaynor, President. W. T. Gaynor. Pay Chase Nat'l Bank, N. Y., or order, for credit of State Bank of Syracuse, N. Y.; J. C. Chase, Cashier. Trust and Deposit Company, Syracuse, Sept. 17, 1894, N. Y., Onon-

daga. Received payment through the New York Clearing House. Sep. 18, 1894; Chase Nat'l Bank, New York, J. T. Mills, Jr., Cashier." Attached to the record marked Exhibit 167.

"No. 269,258, Sept. 8, 1894, Pay to the order of The Atlantic Contracting Co., John F. Gaynor, President, $100,000.00. Paid Sep. 11, 1894." Endorsed: "Cr. a/c B. D. Greene. The Atlantic Contracting Co., John F. Gaynor, President. Received payment through the Clearing House, per pro. Am. Exch. Nat'l Bk., N. Y., J. J. Bennett." Attached to the record marked Exhibit 168.

"No. 269,259, Sept. 8, 1894, Pay to the order of The Atlantic Contracting Co., John F. Gaynor, President, $100,000.00. Paid Sep. 10, 1894." Endorsed: "The Atlantic Contracting Co., John F. Gaynor, President. J. S. Carr, A. Cash." pencil marked "OC" and "C". Attached to the record marked Exhibit 169.

"No. 269,273, Oct. 2, 1894, Pay to the order of The Atlantic Contracting Co., Edward H. Gaynor, Treas., $1,000.00. Paid Jan'y 5, 1895." Endorsed: "Pay to the order of W. T. Gaynor; The Atlantic Contracting Co., Edward H. Gaynor, Treasurer. W. T. Gaynor. 21 Jan. 4, 1895. Received 1247 payment through the New York Clearing House; American Exchange National Bank, Edward Burns, Cashier. 5, 1895." Attached to the record marked Exhibit 170.

"No. 269,274, Oct. 2, 1894, Pay to the order of The Atlantic Contracting Co., Edward H. Gaynor, Treas., $12,500.00 Paid Oct. 6, 1894 Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treas. For Deposit, B. D. Greene. Received payment through the Clearing House, per pro. Am. Exch. Nat'l Bk., N. Y., J. J. Bennett." Attached to the record marked Exhibit 171.

"No. 269.275, Oct. 2, 1894, Pay to the order of The Atlantic Contracting Co., Edward H. Gaynor, Treasurer, $15,325.00. Paid October 24, 1894." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treasurer. W. T. Gaynor. Pay National Park Bank or order for collection account of Southern Bank State of Ga., James Sullivan, Cashier; James Sullivan, Cashier. Received payment through the New York Clearing House; National Park Bank, Geo. S. Hickok, Cashier. Oct. 24, 1894." Attached to the record marked Exhibit 172.

No. 269,276, October 2, 1894, Pay to the order of The Atlantic Contracting Co., Edward H. Gaynor. Treasurer, $24,-

075.00." There has been a correction in this check from $100,000.00 to $24,075.00, which is certified to by Capt. Carter. It is endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treasurer. For Deposit, B. D. Greene. Received payment through the Clearing House,, per pro. Am. Exch., Nat'l Bk, N. Y., J. J. Bennett." Attached to the record marked Exhibit 173.

"No. 269,277, Oct. 2, 1894, Pay to the order of The Atlantic Contracting Co., Edward H. Gaynor, Treasurer, $26,750.00. Paid Oct. 6, 1894." Endorsed: "The Atlantic Contracting Company, Treasurer, Edward H. Gaynor, Treasurer. For Deposit, B. D. Greene. Received payment through the Clearing House, per pro. Am. Exch. Nat'l Bk, N. Y., J. J. Bennett." Attached to the record marked Exhibit 174. On page 68 of this record, it is stated that this check was paid Oct. 9th. It appears, however, from copy of check just read, that it was paid Oct. 6, 1894, which seems to have been the usual time.

1248 "No. 269,286, November, 9, 1894, Pay to the order of The Atlantic Contracting Co., Edward H. Gaynor, Treas., $1,000.00. Paid Jan'y 5. 1895." Endorsed: "Pay to the order of W. T. Gaynor, The Atlantic Contracting Co., Edward H. Gaynor, Treas. W. T. Gaynor. Received payment through the New York Clearing House; American Exchange National Bank, Edward Burns, Cashier. Jan. 5, 1895. 21, Jany 4, 1895." Attached to the record and marked Exhibit 175.

"No. 269,287, November 9, 1894, Pay to the order of the Atlantic Contracting Co., Edward H. Gaynor, Treasurer, $6,875. Paid Nov. 13, 1894." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treasurer. For Deposit, B. D. Greene. Am. Exch. Nat'l Bank, New York, Nov. 12, 1894. P. Endorsement guaranteed. Received payment through the New York Clearing House; American Exchange National Bank, Edward Burns, Cashier. Nov. 13, 1894." Attached to the record marked Exhibit 176.

"No. 269,288, November 9, 1894, Pay to the order of The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, $10,000.00. Paid Nov. 13, 1894." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treasurer. For Deposit, J. F. Gaynor. Received payment through the New York Clearing House; American Exchange Nat'l Bank, Edward Burns, Cashier. Nov. 13, 1894." Attached to the record marked Exhibit 177.

"No. 269,289, November 9, 1894, Pay to the order of The Atlantic Contracting Co., Edward H. Gaynor, Treas., $13,-200.00. Paid Nov. 13, 1894." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treasurer. For Deposit, B. D. Greene. Am. Exch. National Bank, New York, Nov. 12, 1894. P. Endorsement. Received payment through the New York Clearing House; American Exchange National Bank, Edward Burns, Cashier. Nov. 13, 1894." Attached to the record marked Exhibit 178.

"No. 269,290, November 9, 1894, Pay to the order of the Atlantic Contracting Co., Edward H. Gaynor, Treasurer, $13,228.92. Paid November 28, 1894." Endorsed: "The 1249 Atlantic Contracting Co., Edward H. Gaynor, Treasurer. W. T. Gaynor. Pay National Park Bank or order for collection account of Southern Bank State of Ga., James Sullivan Cashier; James Sullivan Cashier. Received payment through the New York Clearing House; National Park Bank, Geo. S. Hickok, Cashier, Nov. 28, 1894." Attached to the record marked Exhibit 179.

"No. 269,293, December 5, 1894, Pay to the order of The Atlantic Contracting Co., Edward H. Gaynor, Treas., $23,-000.00. Paid Dec. 12, 1894." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treas. For Deposit, B. D. Greene. Received payment through the Clearing House, per pro. Am. Exch. Nat'l Bk., N. Y., J. J. Bennett." Attached to the record marked Exhibit 180.

"No. 269,294, December 5, 1894, Pay to the order of The Atlantic Contracting Co., Edward H. Gaynor, Treasurer, $15,-603.72. Paid December 10, 1894." Endorsed: "The Atlantic Contracting Company, Edward H. Gaynor, Treasurer. Pay National Park Bank or order for collection account of Southern Bank State of Ga., James Sullivan, Cashier; James Sullivan, Cashier. Received payment through the New York Clearing House; National Park Bank, Geo. S. Hickok, Cashier., Dec. 10, 1894." Attached to the record marked Exhibit 181.

"No. 269,396, January 11, 1895, Pay to the order of The Atlantic Contracting Co., Edward H. Gaynor, Treasurer, $1,000.00. Paid Jan. 14, 1895." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treasurer. Pay National Union Bank, New York, or order, for collection, account Merchants Nat'l Bank, Savannah, Ga., Wm. W. Rogers Cashier; Wm. W. Rogers, Cashier. National Union Bank, Paid, Jan'y 14, 1895, Wm. H. Jewett, Asst. Cashier,

New York, N. Y." Attached to the record marked Exhibit 182.

"No. 269,398, Jan'y 11, 1895, Pay to the order of The Atlantic Contracting Co., Edward H. Gaynor, Treas., $29,000.00. Paid Jan'y 18, 1895." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor Treasurer. For Deposit, B. D. Greene. Received payment through the New York Clearing House, per pro. Am. Exch Nat'l Bk., N. Y., J. J. Bennett." Attached to the record marked Exhibit 183.

1250 "No. 269,397, January 11, 1895, Pay to the order of The Atlantic Contracting Co., Edward H. Gaynor, Treasurer, $9,368.67. Paid Jan. 14, 1895." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treas. Pay National Union Bank, New York, or order, for collection account of Merchants National Bank, Savannah, Ga., Wm. W. Rogers, Cashier; Wm. W. Rogers, Cashier. National Union Bank, Paid, Jan. 14, 1895, A. M., New York, N. Y., Wm. H. Jewett, Asst. Cashier." Attached to the record marked Exhibit 184.

"No. 269,418, February 1, 1895, Pay to the order of The Atlantic Contracting Co., Edward H. Gaynor, Treasurer, $30,000.00. Paid Feb. 5, 1895." Endorsed: "Pay to the order of W. T. Gaynor, The Atlantic Contracting Co., Edward H. Gaynor, Treasurer. W. T. Gaynor. Received payment through the New York Clearing House, American Exch. Nat'l Bank, Edward Burns, Cashier, Feb. 4, 1895. 21 Feb. 4, 1895." Attached to the record marked Exhibit 185.

"No. 269,425, March 2, 1895, Pay to the order of The Atlantic Contracting Co., Edward H. Gaynor, Treas., $1,000.00. Paid March 12, 1895." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treasurer. Pay National Park Bank or order for collection, account of Southern Bank State of Ga., James Sullivan, Cashier; James Sullivan, Cashier. Received payment through the New York Clearing House; Nat'l Park Bank, Geo. S. Hickok, Cashier, Mar. 12, 1895." Attached to the record marked Exhibit 186. On page 70 of this record, it is stated that this check was paid March 13, 1895, while from copy of check just read, it appears that it was paid Mar. 12, 1895.

"No. 269,426, March 2, 1895, Pay to the order of The Atlantic Contracting Co/, Edward H. Gaynor, Treas., $24,612.62. Paid March 12, 1895." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treasurer. Pay National Park Bank, or order, for collection, account of South-

ern Bank State of Ga., James Sullivan, Cashier; James Sullivan, Cashier. Received payment through the New York Clearing House; National Park Bank, Geo. S. Hickok, Cashier, Mar. 12, 1895. Attached to the record marked Exhibit 187.

1251 "No." 69,438, April 5, 1895, Pay to the order of The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, $1,000.00 Paid June 26, 1895." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor Treasurer. Pay National Park Bank, or order, for collection account of Southern Bank State of Ga., James Sullivan, Cashier; James Sullivan, Cashier. Received payment through the New York Clearing House, Nat'l (there is an erasure there) Nk, Geo. S. Hickok, Cashier, June 26, 1895. Received payment through the New York Clearing House, Nat'l Park Bank, Geo. S. Hickok, Cashier, June 26, 1895." Attached to the record marked Exhibit 188.

"No. 269,439, April 5, 1895, Pay to the order of The Atlantic Contracting Co., Edward H. Gaynor, Treas., $10,000.00. Paid May 1, 1895." Endorsed: "The Atlantic Contracting Company, Edward H. Gaynor, Treasurer. Pay National Park Bank, or order, for collection account of Southern Bank State of Ga., James Sullivan, Cashier; James Sullivan Cashier. Received payment through the New York Clearing House; National Park Bank, Geo. S. Hickok, Cashier, May 1, 1895." Attached to the record marked Exhibit 189. On page 71 of this record, it is stated that this check was paid May 6th, while it appears from copy of check just read that it was paid May 1, 1895

"No. 269,440, April 5, 1895, Pay to the order of The Atlantic Contracting Company, Edward H Gaynor, Treasurer, $12.316.32. Paid April 11, 1895." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor. Treasurer. Pay National Park Bank, or order, for collection account of Southern Bank Dtate of Ga., James Sullivan, Cashier; James Sullivan, Cashier. Received payment through the New York Clearing House; Nat'l Park Bank, Geo. S. Hickok, Cashier, April 11, 1895." Attached to the record marked Exhibit 190.

"No. 269,441, April 5, 1895, Pay to the order of The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, $25,000.00. Paid April 9, 1895." Endorsed: "The Atlantic Contracting Company, Edward H. Gaynor, Treasurer. W. T. Gaynor. Received payment through the New York Clear-

ing House; American Exchange Nat'l Bank, Edward
1252 Burns, Cashier, April 9, 1895." Attached to the record marked Exhibit 191.

"No. 269,442, April 5, 1895, Pay to the order of The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, $15,340.18. Paid April 9, 1895." Endorsed: "The Atlantic Contracting Company, Edward H. Gaynor, Treasurer. S. T. Gaynor. Received payment through the New York Clearing House. American Exchange National Bank, Edward Burns, Cashier. Apl. 9, 1895." Attached to the record marked Exhibit 192.

"No. 269,453, May 4, 1895, Pay to the order of The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, $19,860.08. Paid May 23, 1895." Endorsed: "Pay to the order of John F. Gaynor, The Atlantic Contracting Company, Edward H. Gaynor, Treasurer. John F. Gaynor. Received payment through the New York Clearing House; American Exchange National Bank, Edward Burns, Cashier, May 23, 1895 21; May 22, 1895." Attached to the record marked Exhibit 193.

"No. 200,267, November 17, 1892, Pay to the order of Edward H. Gaynor, $1,092.32. Paid Nov. 21, 1892." Endorsed: "Pay to the order of John F. Gaynor, Edward H. Gaynor. J. F. Gaynor. Pay C. H. Patterson, Cashier, or order, Jas. H. Hunter, Cashier. The Fourth Natl Bank of the City of New York, by F M. Hinkle, Atty." Attached to the record marked Exhibit 194.

"No. 200,301, December 16, 1892, Pay to the order of Edward H. Gaynor, $21,102.67. Paid Jan. 3, 1893." Endorsed: "Pay to the order of the Atlantic Contracting Co., John F. Gaynor, President; Edward H. Gaynor. The Atlantic Contracting Co., John F. Gaynor, President. E. Burns, Cash." Pencilled with "C" for cash, and "OC". for over the counter. Attached to the record marked Exhibit 195.

"No. 200,309, December 31, 1892, Pay to the order of Edward H. Gaynor, $21,492.78. Paid Jan. 3, 1893." Endorsed: "Pay to the order of the Atlantic Contracting Company, John F. Gaynor, President; Edward H. Gaynor. The Atlantic Contracting Co., John F. Gaynor, President. E. Burns,
1253 Cash." Marked in pencil "C" for cash and "OC" for over the counter. Attached to the record marked Exhibit 196.

"No. 200,311, January 5, 1893, Pay to the order of Edward H. Gaynor, $493.59. Paid Jan. 24, 1893." Endorsed: "Pay

to the order of J. F. Gaynor; Edward H. Gaynor. J. F. Gaynor. Pay C. H. Patterson, Cashier, or order; Jas H. Hunter, Cashier. The Fourth National Bank of the city of New York, by R. C. Thorp, Atty." Attached to the record marked Exhibit 197.

"No. 200,321, Feb'y 4, 1893, Pay to the order of Edward H. Gaynor, $20,274.07. Paid February 9, 1893." Endorsed: Pay to the order of J. F. Gaynor. Edward H. Gaynor. J. F. Gaynor. Pay C. H. Patterson, Cashier, or order; Jas. H. Hunter, Cashier. The Fourth Nat'l Bank of the City of New York, by F. M. Hinkle, Atty." Attached to the record marked Exhibit 198.

"No. 224,374, March 6, 1893, Pay to the order of Edward H. Gaynor, $16,433.14. Paid March 10, 1893." Endorsed: "Pay to the order of J. F. Gaynor; Edward H. Gaynor. J. F. Gaynor. Pay C. H. Patterson, Cashier, or order, Jas. H. Hunter, Cashier. Received payment through the New York Clearing House. The Fourth National Bank of the City of New York, Chas. H. Patterson, Cashier, March 9, 1893." Attached to the record marked Exhibit 199.

No. 224,387, April 3, 1893, Pay to the order of E. H. Gaynor, $7,000.00. Paid April 11, 1893." Endorsed: "E. H. Gaynor. Pay to the order of Importers and Traders National Bank, New York City; First National Bank of Fernandina; Fernandina, Fla., RC. Cooley, Cashier; R. C. Cooley, Cashier. Received payment through the New York Clearing House; The Importers and Traders National Bank of New York, E. Townsend, Cashier. April 10, 1893." Attached to the record marked Exhibit 200.

"No. 269,471, June 4, 1895, Pay to the order of Wm. T. Gaynor, $15,000.00. Paid June 18, 1895." Endorsed: "Wm. T. Gaynor. Pay National Park Bank or order for collection account of Southern Bank State of Ga., James Sullivan, Cashier; James Sullivan, Cashier. Received payment through the New York Clearing House; Nat'l Park Bank, Geo. S. Hickok, Cashr., June 18, 1895." Attached to the
1254 record marked Exhibit 201. On page 74 of this record, it is stated that this check was paid July 19, while it appears from copy of check just read that it was paid June 18, 1895.

"No. 269,437, April 5, 1895, Pay to the order of Anson M. Bangs, $29,659.82. Paid April 9, 1895." Endorsed: "Pay to the order of Wm. T. Gaynor; Anson M. Bangs. W. T. Gaynor. Received payment through the New York Clearing

House; American Exchange Nat'l Bank, Edward Burns, Cashier, April 9, 1895." Attached to the record marked Exhibit 202.

"No. 269,424, March 2, 1895, Pay to the order of Anson M. Bangs, $21,287.65. Paid Mar. 6, 1895." Endorsed: "Pay to the order of J. F. Gaynor; Anson M. Bangs. J. F. Gaynor. American Exchange Nat'l Bank, Paid. Cashed E. B. E. 1st Teller 21; Mar. 5, 1895. Received payment through the New York Clearing House; American Exchange Nat'l Bank, Edward Burns, Cashier, Mar. 6, 1895." Attached to the record marked Exhibit 203.

"No. 269,399, January 11, 1895, Pay to the order of Anson M. Bangs, $9,845.35. Paid Jan. 28, 1895." Endorsed: "Pay to the order of E. H. Gaynor; Anson M. Bangs. E. H. Gaynor; E. H. Gaynor, Treas. Pay National Park Bank or order, for collection, account of Southern Bank State of Ga., James Sullivan, Cashier; James Sullivan, Cashier. Received payment through the New York Clearing House; National Park Bank, Geo. S. Hickok, Cashier, Jan. 28, 1895." Attached to the record marked Exhibit 204.

"No. 269,296, December 5, 1894, Pay to the order of Anson M. Bangs, $874.73. Paid Dec. 21, 1894." Endorsed: "For deposit to the account of B. D. Greene; Anson M. Bangs. 21; Dec. 20, 1894. Received payment through the New York Clearing House; American Exch. National Bank, Edward Burns, Cashier, Dec. 21, 1894." Attached to the record marked Exhibit 205. On page 75 of this record, the amount of this check is given as $87,473.00, while from copy of check just read, it appears that the amount is $874.73.

"No. 224,415, May 25, 1893, Pay to the order of Ed-
1255 ward H. Gaynor $26,706.46. Paid June 5, 1893." En-
dorsed: "Edward H. Gaynor. For Deposit, B. D. Greene. J. S. Carr, A. C." Pencilled "O.C.", paid over the counter. Attached to the record marked Exhibit 206.

"No. 224,414, May 22, 1893, Pay to the order of E. H. Gaynor, $8,404.53. Paid June 5, 1893." Endorsed: "E. H. Gaynor. For deposit, B. D. Greene. J. S. Carr, A. C." and in pencil "C. O. C."—paid over the counter, as the other one was. J. S. Carr does not seem to represent any bank. Attached to the record marked Exhibit 207.

Mr. Rose: It has been testified before that Carr was Cashier of the American Exchange National Bank.

Judge-Advocate: It doesn't seem to have gone through a bank.

Mr. Rose: It says, "A. C.", Assistant Cashier.

Judge-Advocate: Yes, but not Assistant Cashier of anything in particular. If acting as Assistant Cashier of the Bank, I would assume that the endorsement would so state. I am reading a description of the check.

"No. 269,455, May 4, 1895, Pay to the order of Anson M. Bangs, $7,500.00. Paid May 3, 1895." Endorsed: "Pay to the order of John F. Gaynor; Anson M. Bangs. John F. Gaynor. 21; May 22, 1895. Received payment through the New York Clearing House; American Exchange National Bank, Edward Burns, Cashier. May 23, 1895." Attached to the record marked Exhibit 208.

"No. 269,454, May 4, 1895, Pay to the order of Anson M. Bangs, $1,000.00. Paid Aug. 5, 1895." Endorsed: "Anson M. Bangs. Edward H. Gaynor. Pay C. H. Patterson, Cashier, or order, Jas. H. Hunter, Cashr. Received payment through the New York Clearing House; The Fourth National Bank of the City of New York, Chas. H. Patterson, Cashier, Aug. 5, 1895." Attached to the record marked Exhibit 209.

"No. 269,420, Feb'y 1, 1895, Pay to the order of Anson M. Bangs, $10,300.50. Paid Feb. 23, 1895." Endorsed: "Pay to the order of E. H. Gaynor; Anson M. Bangs. E. H. Gaynor;
E. H. Gaynor, Treas. Pay National Park Bank, or or-
1256 der, for collection account of Southern Bank State of
Ga., James Sullivan, Cashier; James Sullivan, Cashier. Received payment through the New York Clearing House; National Park Bank, Geo. S. Hickok, Cashier, Feb. 3, 1895." Attached to the record marked Exhibit 210.

"No. 269,456, May 4, 1895, Pay to the order of Anson M. Bangs, $23,559.92. Paid May 18, 1895." Endorsed: "Pay to the order of Edward H. Gaynor, Treasurer, The Atlantic Contracting Company; Anson M. Bangs. Edward H. Gaynor, Treasurer, The Atlantic Contracting Company. Pay National Park Bank, or order, for collection account of Southern Bank of State of Georgia, James Sullivan, Cashier; Horace A. Crane, V. President. Received payment through the New York Clearing House; National Park Bank, Geo. S. Hickok, Cashier, May 18, 1895." Attached to the record marked Exhibit 211.

"No. 224,388, April 3, 1893, Pay to the order of E. H. Gaynor, $7,218.86. Paid April 11, 1893." Endorsed: "Pay to the order of J. F. Gaynor; E. H. Gaynor. J. F. Gaynor. Pay C. H. Patterson, Cashier, or order; Jas. H. Hunter, Cashier.

Received payment through the New York Clearing House; The Fourth National Bank of the City of New York, Chas. H. Patterson, Cashier, April 10, 1893." Attached to the record marked Exhibit 212.

"No. 224,404, May 2, 1893, Pay to the order of Edward H. Gaynor, $20,436.06." There is a correction made in this check, and certified to by Capt. Carter. It is endorsed: "Corrected to Twenty thousand four hundred and thirty-six 06/100 Dollars; signed O. M. Carter, Capt., Corps of Engrs., U. S. A. Paid May 8, 1893." That is endorsement on the face of the check. On the back, it is endorsed: "Corrected to $20,436.06; Twenty thousand, four hundred and thirty six Dollars and six cents. (sgd) O. M. Carter, Capt., Corps of Engrs., U. S. A. Pay to the order of J. F. Gaynor; Edward H. Gaynor. J. F. Gaynor. Pay C. H. Patterson, Cashier, or order; Jas. H. Hunter, Cashier. Received payment through the New York Clearing House; The Fourth Nat'l Bank of the City of New
1257 York, Chas. H. Patterson, Cashier, May 6, 1893." Attached to the record marked Exhibit 213.

"No. 224,645, January 2, 1894, Pay to the order of The Atlantic Contracting Co., Edward H. Gaynor, Treasurer, $6,000.00. Paid Jan. 9, 1894." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treas. W. T. Gaynor. Received payment through the New York Clearing House; American Exchange National Bank, Edward Burns, Cash. Jan. 9, 1894." Attached to the record marked Exhibit 214.

"No. 224,643, January 2, 1894, Pay to the order of The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, $1,000.00. Paid Mar. 9, 1894." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treas. Received payment through the New York Clearing House; American Exchange National Bank, Edward Burns, Cashier, Mar. 9, 1894." Attached to the record marked Exhibit 215.

"No. 224,644, January 2, 1894, Pay to the order of The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, $6,000.00. Paid Jan. 9, 1894." Endorsed: "21; Jan. 8, 1894. The Atlantic Contracting Company, Edward H. Gaynor, Treas. W. T. Gaynor. Received payment through the New York Clearing House; American Exchange Nat'l Bank/ Edward Burns, Cashier, Jan. 9, 1894." Attached to the record marked Exhibit 216.

"No. 224,646, January 2, 1894, Pay to the order of the Atlantic Contracting Company, Edward H. Gaynor, Treas-

urer, $22,500.00. Paid Jan. 9, 1894." Endorsed: "21; Jan. 8, 1894. The Atlantic Contracting Company, Edward H. Gaynor, Treasurer. W. T. Gaynor. Received payment through the New York Clearing House; American Exch. National Bank, Edward Burns, Cashier, Jan. 9, 1894." Attached to the record marked Exhibit 217.

"No. 269,484, July 1, 1895, Pay to the order of W. T. Gaynor, $4,831.78. Paid July 6, 1895." Endorsed: "W. T. Gaynor. For deposit, B. D. Greene. Received payment through the New York Clearing House; American Exch. Nat'l Bk, Edward Burns, Cashier, July 6, 1895." Attached to the record marked Exhibit 218.

1258 "No. 269,485, July 1, 1895, Pay to the order of W. T. Gaynor, $6,630.89. Paid July 6, 1895." Endorsed: "W. T. Gaynor. For deposit B. D. Greene. Received payment through the New York Clearing House; American Exch. Nat'l Bank, Edward Burns, Cashier, July 6, 1895." Attached to the record marked Exhibit 219.

"No. 269,486, July 1, 1895. Pay to the order of W. T. Gaynor, $13,490.08. Paid July 6, 1895." Endorsed: "W. T. Gaynor. For deposit, B. D. Greene. Received payment through the New York Clearing House, American Exch. National Bank, Edward Burns, Cashier, July 6, 1895." Attached to the record marked Exhibit 220.

"No. 269,487, July 1, 1895, Pay to the order of W. T. Gaynor, $2,908.57. Paid July 6, 1895." Endorsed: "W. T. Gaynor. For deposit, B. D. Greene. Received payment through the New York Clearing House; American Exchange Nat'l Bank, Edward Burns, Cashier, July 6, 1895." Attached to the record marked Exhibit 221.

"No. 270,431, December 16, 1896, Pay to the order of The Atlantic Contracting Co., Edward H. Gaynor, Treas., $666.00. Paid Jan'y 22, 1897." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treas. Pay National Park Bank of New York, or order; Southern Bank of the State of Ga., James Sullivan, Cashier; James Sullivan, Cashier. Received payment through the New York Clearing House; National Park Bank, Geo. S. Hickok, Cashier, Jan. 22, 1897." Attached to the record marked Exhibit 222.

"No. 270,439, Jan'y 12, 1897, Pay to the order of The Atlantic Contracting Co., Edward H. Gaynor, Treas., $353.76. Paid Jan. 25, 1897." Endorsed: "The Atlantic Contracting Company, Edward H. Gaynor, Treasurer. Pay National

Park Bank, New York, or order; Southern Bank of the State of Ga., James Sullivan, Cashier; James Sullivan, Cashier. Received payment through the New York Clearing House; Nat'l Park Bank, Geo. S. Hickok, Cashier, Jan. 25, 1897."

Attached to the record marked Exhibit 223.

1259 "No. 269,419, Feb'y 1, 1895, Pay to the order of Anson M. Bangs, $7,500.00. Paid Feb. 5, 1895." Endorsed: "Pay to the order of Wm T. Gaynor; Anson M. Bangs. W. T. Gaynor. Pay National Park Bank or order for collection account of Southern Bank State of Ga., James Sullivan, Cashier; James Sullivan, Cashier. Received payment through the New York Clearing House; National Park Bank, Geo. S. Hickok, Cashier, Feb. 5, 1895." Attached to the record marked Exhibit 224.

"No. 270,492, March 10, 1897, Pay to the order of The Atlantic Contracting Co., Edward H. Gaynor, Treasurer, $384.00. Paid March 30, 1897." Endorsed: "The Atlantic Contracting Co., Edward H. Gaynor, Treasurer. Pay National Park Bank of New York, or order; Southern Bank of the State of Ga., James Sullivan, Cashier; James Sullivan, Cashier. Received payment through the New York Clearing House; National Park Bank, Geo. S. Hickok, Cashier, Mar. 30, 1897." Attached to the record marked Exhibit 225.

"No. 270,536, July 6, 1897, Pay to the order of The Atlantic Contracting Co., $230,749.90. Paid July 7, 1897." Endorsed: "The Atlantic Contracting Co., John F. Gaynor, President. For Deposit, B. D. Greene. H. G. Ward. Endorsement Knickerbocker Trust Company Guaranteed; Knickerbocker Trust Co., F. L. Eldridge, Secty. Endorsement Correct, Manhattan Company, N. Y., W. E. Trotter, A. Cashr." Attached to the record marked Exhibit 226.

"No. 270,537, July 6, 1897, Pay to the order of The Atlantic Contracting Co., $345,000.00. Paid July 7, 1897." Endorsed: "H. G. Ward. The Atlantic Contracting Co., John F. Gaynor, President. For deposit, B. D. Greene. Endorsement, Knickerbocker Trust Company Guaranteed; Knickerbocker Trust Co., F. L. Eldridge, Secty. Endorsement Correct, Manhattan Company N. Y., Wm. E. Trotter, A. Cash." Attached to the record marked Exhibit 227.

(At this point, 1:15 p. m., Court took a recess until 1:37 p. m., when Court was called to order, and the Judge-Advocate continued as follows:)

1260 I offer in evidence a check signed by the accused on the Assistant Treasurer of the U. S., New York, "No. 200,266,

Savannah, Ga., November 17, 1892, Pay to the order of William H. Walsh, $3,057.75" for "Savannah River, Ga., above Contract." This is the original check from which I read. It is endorsed: "Pay to the order of J. F. Gaynor; William H. Walsh, J. F. Gaynor. Pay C. H. Patterson, Cashier, or order; Jas. H. Hunter, Cashr. The Fourth National Bank of the City of New York, by F. M. Hinkle, Atty.", and is stamped "Paid Nov. 21, 1892." Copy will be attached to the record marked Exhibit 228.

I offer in evidence copies of checks signed by the accused, sent me by the Assistant Treasurer of the U. S., New York, as follows:

"No. 269,478, June 29, 1895, Pay to the order of Anson M. Bangs, $20,577.97. Paid July 9, 1897. Object for which drawn: Cumberland Sound, Ga., Jetty Work, Final Payment." Endorsed: "#Guaranteed to be the signature of Anson M. Bangs, E. Burns, Cash. #Anson M. Bangs. For deposit B. D. Greene. Received payment through the Clearing House, per pro. Am Exch. Nat'l Bank, N. Y., R. H. Williams. Received payment through the New York Clearing House; American Exchange National Bank, Edward Burns, Cashier, July 6, 1895." Atached to the record marked Exhibit 229.

"No. 269,483, July 1, 1895, Pay to the order of The Atlantic Contracting Co., Edward H. Gaynor, Treasurer, $1,-902.80. Paid July 6, 1895. Object for which drawn: Savannah Harbor, Board & Lodging". Endorsements: "The Atlantic Contracting Vompany, Edward H. Gaynor, Treasurer. For Deposit, B. D. Greene. Received payment through the New York Clearing House; American Exchange National Bank, Edward Burns, Cashier, July 6, 1895." Attached to the record marked Exhibit 230.

"No, 269,484, July 1, 1895, Pay to the order of W. T. Gaynor, $4,831.78. Paid July 6, 1895. Object for which drawn: Darien Harbor Jetty Work." Endorsed: "W. T. Gaynor. For deposit, B. D. Green. Received payment through the New York Clearing House; American Ex-
1261 change National Bank, Edward Burns, Cashier, July 6, 1895." Attached to the record marked Exhibit 231.

"No. 269,485, July 1, 1895, Pay to the order of W. T. Gaynor, $6.630.89. Paid July 6, 1895. Object for which drawn: Altamaha River, Ga., Jetty Work." Endorsed: "W. T. Gaynor. For deposit, B. D. Greene. Received payment through the New York Clearing House American Exchange

National Bank, Edward Burns, Cashier, July 6, 1895." Attached to the record marked Exhibit 232.

"No. 269,486, July 1, 1895, Pay to the order of W. T. Gaynor, $13,490.08. Paid July 6, 1895. Object for which drawn: Waterway Jetty Work." Endorsed: W. T. Gaynor. For deposit, B. D. Greene. Received payment through the New York Clearing House; American Ecchange National Bank, Edward Burns, Cashier, July 6, 1895." Attached to the record marked Exhibit 233.

"No. 269,487, July 1, 1895, Pay to the order of W. T. Gaynor, $2,908.57. Paid July 6, 1895. Object for which drawn: Jekyl Creek Jetty Work." Endorsed: "W. T. Gaynor. For deposit, B. D. Greene. Received payment through the New York Clearing House; American Exch. National Bank, Edward Burns, Cashier, July 6, 1895." Attached to the record marked Exhibit 234.

"No. 269,488, July 1, 1895, Pay to the order of The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, $57,505.13. Paid July 6, 1895. Object for which drawn: Savannah Harbor Jetty Work." Endorsed: "The Atlantic Contracting Company, Edward H. Gaynor, Treasurer. W. T. Gaynor. Received payment through the Clearing House, per pro. Am. Exch. Nat'l Bk, N. Y., J S. Carr, A. C. Received payment through the New York Clearing House; American Exchange National Bank, Edward Burns, Cashier, July 6, 1895," and appears to have "21", Clearing House number, "July 4, 1895." Attached to the record marked Exhibit 235.

"No. 269,489, July 1, 1895, Pay to the order of The Atlantic Contracting Company, Edward H. Gaynor, Treasurer,
1262 $34,314.73. Paid July 6, 1895. Object for which drawn: Savannah Harbor Jetty Work." Endorsed: "The Atlantic Contracting Company, Edward H. Gaynor, Treasurer. For Deposit, B. D. Greene. Received payment through the New York Clearing House; American Exchange National Bank, Edward Burns, Cashier, July 6, 1895." Attached to the record marked Exhibit 236.

Mr. Rose: I notice that, in reading the last checks, you stated the object for which they were drawn, but you did not read the object in reading the other checks. I understand the object is stated on all of them.

Judge-Advocate: I didn't read the object stated in the

others, but they are before the Court as Exhibits, and they can read them. I had a purpose in reading these.

(At 1.55 p. m., Reporter W. O. Tarver was relieved by Reporter Geo. T. Cann.)

1263 ARTHUR S. COOPER, recalled as a witness for the prosecution, having been previously duly sworn, testified as follows:—

Direct Examination.

Questions by the Judge-Advocate:

Q. Mr. Cooper, what are guide piles? as undeestood in this engineering district?

A. Guide piles are piles driven on the axis of a dam, or on the side of a dam, to be used for the purpose of sinking mats or mattresses.

Q. When did you first see them used in this district?

A. About the middle of Sept., 1893.

Q. You were then the superintendent?

A. I was the Engineer-in-charge on the works of the construction work.

Q. Were you instructed to use guide piles?

A. No, sir, I was not. Shortly after the storm of Aug. 27, 1893, the contractor's plant was partly destroyed and scattered about, and the question came up as to how they should continue the work, and it was suggested that the mats be built on barges, instead of being built in place. Then when those mats were built on barges, the question came up as to how they should be launched and put in place. It was first thought they could simply launch them or simply put them in place by means of anchors and lines, the same as log mattresses were sunk, but the contractor's foreman suggested it might be advisable to drive piling to sink these mattresses against, and let them go down alongside the piling and thereby hold them in position. I told the foreman that if he wished to do so that that was his business and not mine (or the contractor's business) and if he drove this piling, the Government would not pay for them; he replied

1264 the contractor's are able to drive these pilings and pay for them, because it was better and handier to sink the mattresses in this manner.

Q. Did you get written instructions in regard to that matter?

A. Not at that time.

Q. Did you at any time get instructions?

A. I received a letter on Feb. 8th, requiring me to report a number of guide piles that had been driven up to that date.

Q. Have you that letter?

A. I have.

Q. Produce it.

(Here the witness produces the letter)

Q. This is a letter sent by Capt. Carter?

A. It is.

Judge-Advocate: I offer in evidence and read:

Memo. for Mr. A. S. Cooper, Asst. Engineer.

"Unilted States Engineer Office.

Savannah, Ga. Feb. 8, 1894.

"At an early a date as practicable, you will send to this office a list of the number of piles driven in the North Long Island Training Wall and elsewhere, as guides for the sinking of mattresses; and you will hereafter submit with the usual tri-monthly reports, a list of such piles as may be, in the future, driven for that purpose.

O. M. CARTER,

Capt. Corps of Engineers, U. S. A."

Q. What report did you make in response to those instructions?

A. Well, immediately, I didn't have time to count all that had been driven. I proceeded to report those that had been driven as the work advanced by the month; after that, a little more than a month, I had by that time counted those that had previously been driven and reported the number that had been driven.

Q. On the different improvements?

1265 A. On the different improvements.

Q. Have you any reports?

A. I have secured it from the office.

Q. This paper which you produce is from—

A. Is from the records of the office it is a letter written by me March 18, 1894.

Judge-Advocate: I offer in evidence and read, (Reading)

"Savannah, Ga., March 18, 1894.

"Capt. O. M. Carter,
Corps of Engrs. U. S. A.
Savannah, Ga.

"Sir:

In reply to your letter of Feb. 8th, 1894, I would state that as near as can be estimated, there had been 375 piles driven as guides for sinking mats up to that date. "No account of these were made at the time, as they were driven at the contractors' request.

Very respectfully,
Your obt, Servant,

A. S. Cooper,
Asst. Engr.

Q. And in pencil there is written, "Allow, yes" Do you recognize that writing up there?

A. I think it is Capt. Carter's; it is signed "O. M. C."; it looks like his handwriting.

Judge-Advocate: There is a pencil memorandum to this letter, "Allow, yes, estimating linear feet"; then follows the computation, "375 x 4," equal "1500 feet, pile work. O. M. C."

Mr. Blair: Is this offered, Colonel, under the conspiracy charge or any particular specification?

Judge-Advocate: It is offered under the 8th specification to the 2d, charge; and other specifications where the same facts

1266 Mr. Blair: But, Colonel, pardon me for being persistent, to what specification does that relate?

Judge-Advocate: It is in relation to the 8th, specification which will be shown as the testimony proceeds.

Mr. Blair: The 8th specification charges him in 1897, with paying for certain linear piling which he ought not to have paid for.

Judge-Advocate: And this shows the initiation of the method of estimating the payment of paying for such piles.

Mr. Blair: In 1894?

Judge-Advocate: In 1894, yes; this is the origin of the practice. It will be connected.

Mr. Blair: That is under contract and these specifications are in open market bid.

Judge-Advocate: Well, I am simply showing the way in which the estimate was made.

Mr. Blair: All right.

Q. Have guide piles since that time up to the present been reported as guide piles?

A. They have always been so reported by me in all reports I have made.

Q. I refer to your reports.

A. Yes, sir.

Q. You may state, Mr. Cooper, what benefit there was, was it for the Government or for the contractor, that the guide piles should be used?

A. It was of benefit to the contractor, so to facilitate the sinking of the mats; he would get them in place much quicker and at less expense.

Q. Explain the report, please.

A. These piles, as I said, were driven on the axis or side of the dam, say, for instance—about 20 or 30 feet apart; sometimes less, depending on the size of the mat that
1267 was to be launched against the piling. Then as the mat was launched off the lighter, it would be hauled tight against these pilings, and rock thrown on, and the advantage of the piling is that the mat could get into place and be put in position much more quickly; whereas, if the pilings were not there, the mat would have had to be launched in open water, and then run lines and anchors on both sides, and on both ends, to haul it in position, by heaving on a capstan, which, of course, would be a much slower process, and then they would be only able to put in one mat a day, whereas, they have put in as high as four, by using the guide piles.

Q. Then it was greatly to their advantage and an actual economy for the contractors?

A. That is my opinion, yes sir.

Cross-Examination.

Questions by Mr. Blair:

Q. How were the mats launched and sunk in 1896, down here at Tybee, at the breakwater,—the detached extension?

A. They were launched in open water, and hauled into position by anchors and lines.

Q. No piles used?

A. No piles used for the reason that they could not be used.

Q. What contractor was it you talked with about driving these piles for guides?

A. With the contractor's foreman.
Q. Who was he?
A. Mr. Wheeler.
Q. Where?
A. It was about 2,000 feet below Dam 26, near Venus point.
Q. Savannah River?
A. Savannah Harbor.
1268 Q. Savannah Harbor?
A. Yes.
Q. When?
A. About the middle of Sept., 1893.
Q. Who was present?
A. I don't know whether any of their foremen were present or not.
Q. Any body but yourself and Mr. Wheeler?
A. There may have been, but it has been so long ago I cannot remember, there may have been John H. Gaynor.
Q. Now tell us that conversation again.
A. Mr. Wheeler suggested they would drive piles on the axis of the dam, or on the side of the dam in this instance, and launch the mat up against it. Do you want as near as I can, all of it?
Q. Yes.
A. Then I told Mr. Wheeler as I remember it, that I would consider that a very good method of sinking the mats, but I had no authority to pay him, and I did not see any reason why the Government should pay him for those pilings. As I remember he replied that it was to the Atlantic Contracting Company's interest to drive those piles, because it would advance their work in every way, and he considered that they were able, abundantly able, to drive those piles, and he was going to drive them. I told him, very well, as far as I was concerned, I could not pay for them.
Q. That is you mean the Government could not pay him?
A. Representing the Government, I mean, of course.
Q. You didn't pay him, representing the Government, you simply reported to Capt. Carter.
A. I reported it, yes, sir.
Q. You said just now you considered those guide piles, exclusively for the benefit of the contractor?
1269 A. Yes, sir.
Q. That's right, is it?
A. I think so.

Q. Did you ever make any other statement with respect to these guide piles, that they were for the benefit of the Government, and the public generally in order to mark the lines of the dam or the jetty?

A. I don't remember of making that statement.

Q. Well, did you, or didn't you?

A. I cannot say, I don't remember.

Q. Did you ever make it to Mr. Daniel, in 1896 or 1897?

A. '96 or '97, no sir.

Q. Or any other time to Inspector Daniel?

A. Not that I remember of, I may have said, they did mark the dams.

Q. Well, for whose benefit was it if they did mark the dams?

A. Of course, that would be some benefit to the river men in tacking about and beating up the river.

Q. Did you ever hear of any boats being lost by running into the Government works down here that were not marked?

A. I don't know that I know of any that were lost; I know of a good many instances where they have run into training walls.

Q. Have you ever heard of any people being drowned where they had run into the training walls around the harbor here?

A. Not to my recollection; I know that one boat ran into Dam 14 during the storm and was capsized and some men drowned?

Q. Didn't you order Mr. Daniel to report those piles as being of benefit to the Government and the public and they should be paid for, those so-called guide piles?

A. No, sir, I ordered him to report them because I had been ordered to report them. I never told him they should be paid for.

Q. At the time you ordered him to report them, or
1270 at any other time, did you ever make the statement that those piles were of benefit to the public, to serve as marks to locate a dam, or the improvements alongside of which they were driven?

A. As I said before, I don't remember of making that statement.

Q. Well, will you say that you did not or that you did?

A. No, I would not say either.

Q. Did you ever talk in respect to these guide piles to any

other of the contractors, the contractors' foreman, or employes except Mr. Wheeler?

A. When they were first driven, no.

Q. Later on?

A. Perhaps so.

Q. Well, do you know or not?

A. I can't remember all the conversations I ever had about guide piles; they have been using guide piles for the last four years.

Q. Well, do you know whether you talked with anybody else, connected with the contractors, or the contractors themselves, with reference to those guide piles?

A. All the instructions that were given in regard to guide piles, were given by me.

Q. Answer my question, if you please, if you can, if you cannot, say so?

A. I presume off and on, I have talked with all of them in regard to guide piles.

Q. Do you know any one specific occasion where you talked with anybody else than Mr. Wheeler, the contractor's men, or the contractors themselves?

A. No, I cannot remember of any specific case; as I said before, I have probably talked with all of them, about these piles, because that is quite an important part of the work.

Q. Well, will you say you have talked with all of them?

A. I would not make it so broad as that. The prob-

1271 abilities are I have, I cannot say exactly.

Judge-Advocate: Suppose you give a specific time, Mr. Blair, so he can answer it categorically then.

Q. Did you talk with anybody connected with the contractors, or the contractors themselves, or to any of the inspectors, Government inspectors, during the construction of the Cockspur Island training wall on this subject of guide piling?

A. I don't remember of any specific conversation, no. I remember of making the assertion that those buide piles were considerable bother to me in lining in mats. I had to locate my dams about 3 or 3 times as often as I would if they were not there.

Q. Whom did you say that to?

A. I think that was to the inspectors.

Q. What inspectors?

A. Hall and Ford.

Q. Where did you say it to Ford?

A. I don't know, I could not remember that.

Q. When?
A. Sometime in 1894.
Q. Did you ever state to anybody during the construction of the Cockspur Island training wall, that guide piles would benefit the public and the Government, because they marked the line of the improvements?
A. I may have said so. They are of benefit to the small boats in showing them where the dam is, otherwise, they might run on to it, and injure themselves. It is quite probable I said something of that sort, because it is really so.
Q. Then when you made the statement in your direct examination, that they were for the benefit only of the contractors, that was not an accurate answer, was it?
A. Yes, it is, they are for the benefit of the contractors; they incidentally benefit the small boats navigating the harbor.

Q. Don't they primarily benefit the very small boats 1272 generally that do not know the location of the improvements?

A. Certainly they do. They would benefit in that way, no doubt of it in the world.
Q. Why did not you make that full answer on the direct examination?
A. That is a matter that did not concern the contractors and did not concern the Government, that were building this wall.
Q. You were not building it for the benefit of the public?
A. Not for the benefit of small boats; it was for the benefit of navigation.
Q. Building it for the injury of small boats?
A. No, sir, not exactly. Those people who navigate the river, are supposed to keep themselves posted.
Q. As to everything under water and not marked?
A. Everything about the construction works, yes, sir. A man coming into the Savannah harbor, if he don't know the way, ought to employ somebody that does. It would be the best thing for him to do.
Q. That is your idea of the purpose for which the Government constructs works?
A. The Government is obliged to put their construction wherever necessary to complete the work, and it is not their duty to protect the small boats. They must put their jetties to do the work where they want it.

Q. And if they lay a death trap for small boats, it is all right is it?

A. If so, it will have to be so; they are not to blame for it. All the jetties are dangerous to small boats, they cannot be otherwise.

Q. Therefore, you do not mark them?

A. They are marked, that is, they are marked by buoys and cluster piles with range lights on them; that is done
1273 by the lighthouse department, that is not the engineering department; it is not the duty of the Engineer Officer to mark all those jetties.

Q. Are any of those works marked with cluster piles?

A. Some of them are, yes.

Q. Which ones?

A. Dam, 35 used to be marked with cluster piling, 26, 33 and 13.

Q. Any of these have guide piling on them?

A. No.

Q. Any of those marked with guide piling,—are they also marked with cluster piles?

A. Some of them were.

Q. Which ones?

A. The Cockspur Island training wall.

Q. Where?

A. At the outer end they have got two different clusters, to mark the outer end of the Cockspur Island training wall, to guide steamboats, tug boats and small boats, and keep them from running into the outer end. They were placed there by the contractor to protect small boats and the Government paid for it.

Q. The Government pays for driving cluster piles to protect small boats and tug boats. The Government drove piles on Cockspur Island training wall to mark the outer end, in order that tugs and small boats might not run into it?

A. Yes.

Q. But it does not drive guide piles or single piling any where else along the Cockspur Island training wall to mark it, is that your idea?

A. That is my idea. The guide piles were driven for construction purposes, and not for the purpose of marking the wall. When the wall was completed, then if necessary, the

Government would put up whatever marks they deemed proper. That is my idea.

1274 Q. That is your idea?

A. That is my idea. Those guide piles have the same relation to the construction of a jetty that a scaffolding does to a building. The scaffolding is torn down when the building is done. These guide piles may be torn down when the jetty was done.

Q. Notwithstanding I might go in a small boat and sail down the river over the public water, and nothing there to mark a training wall or a jetty, and I might drown because it is not marked?

A. That is another matter.

Q. You say that is no concern of the Government?

A. After the jetty is completed, if it becomes necessary, to mark it to protect small boats, the Government would mark it; it is not necessary to mark every 20 feet or 6 feet. Here is a straight wall, 2,000 feet long—

Q. How about during the construction, when putting up the work, when I might know it today and not to morrow?

A. There is always some mark there, some posts that the contractors use.

Q. Always?

A. Yes, sir. When they are building the jetty, they always have numerous posts there.

Q. Along the whole length?

A. Not along the whole length, but wherever they are working.

Q. Then for the most part, this work is all under water, or under water for half the time?

A. It is usually under water and at all times except at low water.

Q. Did you ever hear of any of the contractors wanting to cut those piles down, to low water mark, those guide piles?

1275 A. They were instructed to cut them down by the Engineer Officer.

Q. In writing?

A. No, I think I received verbal instructions.

Q. When?

A. I don't know.

Q. Where?

A. I don't know.

Q. From whom?

A. Capt. Carter.
Q. Concerning what work?
A. Concerning the harbor work, Savannah harbor.
Q. For what?
A. The entire harbor.
Q. What year?
A. That was in 1895.
Q. Was it done?
A. It was. You did not allow me to finish my answer; my answer was I received instructions to cut those guide piles down either at low water, or at about ten feet above low water, according as I thought in my judgment, would give the better appearance to the work, and that was done.
Q. Which, both?
A. Both.
Q. Down to low water and ten feet above low water?
A. Yes, sir, those crooked and ugly looking piles were cut at low water. Those that were straight and on about a line, so as to give a better appearance, were cut ten feet above low water.
Q. Were you not specifically instructed by Capt. Carter to leave certain guide piles above high water, to mark the line of the dams?
A. I was.
1276 Q. Then you did not cut them down to low water, or ten feet above low water, did you?
A. I did. I either cut them to low water, or ten feet above low water.
Q. You disobeyed your orders then, according to your statement?
A. Excuse me, I did not. I received instructions to either cut them at low water, or ten feet above low water,—how is that disobeying orders?
Q. You were instructed, as I understood you to say, to leave them ten feet above low water, to mark the dam?
A. Yes.
Q. You were?
A. Yes, sir.
Q. You are certain of that?
A. That is, part of them.
Q. Where, what part?
A. Well, as I said before, those piles which were crooked and out of line, were cut down at low water, and the straight

ones were left, so as to give a better appearance to the work.

Q. Well, how many did you cut down to low water?

A. Oh, I don't know; possibly a quarter or one third of them;—something like that.

Q. Name any particular place where under your orders, any of those so-called guide piles, were cut off at low water level, any that were paid for?

A. On the Cockspur Island training wall?

Q. Where, what part?

A. All along the wall, from one end to the other.

Q. How many?

A. As I said before, I think about one quarter.

Q. Who cut them off?

1277 A. The Atlantic Contracting Co.

Q. Under what foreman?

A. Under John H. Gaynor or Mr. Wheeler, I dont know which.

Q. In what year?

A. That was in 1895.

Q. In what month?

A. I think it was in August.

Q. Did you make any report of it?

A. I did not.

Q. Why not?

A. I was not told to. It was not necessary. The work was done. They had already been paid for it. It was not necessary to make a report, the piles had been paid for.

Q. About how many piles in number did you cause the Atlantic Contracting Co., in the month of August, 1895, to cut down to low water?

A. I could only give my opinion, I dont know exactly.

Q. Well, give us your best guess?

A. Well, I should say probably, about, between fifty and sixty.

Q. And those were cut down under the foremanship of John F. Gaynor?

A. Either John F. Gaynor or M. J. Wheeler.

Judge Advocate:—John H.

Q. John H. Gaynor?

A. John H. Gaynor or Mr. Wheeler.

Q. This was in August 1895?

A. Either in August or there-abouts.

Q. In the Cockspur Island training wall?

A. The Cockspur Island training wall.

Q. Now, let's go back to dam 31; did you or didnt you give any instructions to have guide piling driven along that dam and order the inspector to report the same, the number of the piles? for payment by the government because they were for the benefit of the government?

1278 A. I ordered the inspector to report the number of piles simply because I was ordered to have him report them.

Q. Did you or didnt you order the inspector to report the number of piles?

A. I did.

Q. At dam 31?

A. I did.

Q. Driven as guide piles?

A. Driven as guide piles?

Q. And did you tell the inspector at that time that he was to report the number driven for payment because they were of benefit to the government?

A. No sir.

Q. You did not make that statement to the inspector?

A. I dont think I did.

Q. Well, do you know whether you did or not?

A. Well, I could not say positively that I did not; I think not.

Q. Who was the inspector?

A. That was Mr. Daniels. If he says I made that statement I dont know whether I would contradict him or not, because I dont remember.

Q. You stated positively on the direct examination that those piles were for the benefit exclusively of the contractors?

A. Yes sir, I think so yet.

Q. You still think so, notwithstanding the fact you have said on the cross examination that those piles were for the benefit of the Government also?

A. I do. They act as a benefit to the small boats to show them where the line of the dam is. If those guide piles were along there say on the Cockspur Island training wall there are probably 300 to mark that dam where a half dozen would serve

1279 the same purpose, they simply being there to mark the wall, they would not pay for 300 piles to do the work of 3 or 4.

Q. If they were not marked at frequent intervals, how would I know if I was sailing my small boat over this harbor?

A. You ought to be able to see a straight line.

Q. Or in thick weather how would I know?
A. In thick weather you ought to be careful how you went.
Q. Therefore, the Government dont put any marks to show where I ought to go?
A. Not every 25 or 30 feet on the wall.

Re-direct Examination.

Questions by the Judge Advocate.
Q. In answering my question as to how it was a benefit, it was a financial benefit you have in view to the contractors?
A. That is what I have in view. The idea that they would facilitate their work very greatly by putting those piles in there.
Q. It was for their pecuniary advantage?
A. Decidedly.
Q. Now assuming that it became desirable in behalf of the public after experimenting at that time, to have guide piles appearing above the water, have you ever seen them provided for since in the specifications?
A. No sir, the guide piles have never been mentioned in the specifications. It does mention in the specifications however that the contractor will be required to furnish all necessary ranges and marks in constructing the different spur-dams and training-walls. That is all that is incorporated in the specifications.
Q. Assuming openings made at Cockspur dam, then Mr. Blair might get drowned if he tried to go through there where they were cut down to low water?
A. He probably would if his boat struck the dam.
Q. And in thick weather he might strike the piles?
1280 A. He certainly would if he didnt keep a sharp look-out.
Q. Are there not many shoals of about the same height of the improvements along the river?
A. There are some, yes.
Q. There are no piles put there to mark those shal places?
A. No, sir; some times buoys are placed in the channel to warn the shipping where the shoal places are.
Q. About how many guide piles are there in the Harbor of Savannah?
A. Under the contract of 1892 there was driven about 1000 guide piles. Under the contract of 1896 I dont suppose there are over 100.

Q. How were they paid for?
A. Paid for as linear feet of pile dams.
Q. What was the calculation?
A. Each pile was figured as equivalent to an advance of four feet.
Q. Four feet of dam?
A. Four feet of dam.
Q. Four feet of pile dam?
A. Yes, sir.
Q. What is a pile dam?
A. A pile dam is a dam constructed by driving two rows of piles 8 feet apart, and 8 feet apart in a row, and between those piles is placed the brush, and then some little stone on top of the brush to prevent it being torn out by storms.
Q. That is 8 feet for each pile or for each two piles?
A. Two piles advancing 8 feet, that would be equivalent to one pile advancing four feet.
Q. Then each guide pile was equal to four feet of the dam?
A. Yes, sir.
Q. Was any guide piling driven during the construction of the Oyster Bed training wall?
A. No, sir.
1281 Q. Was it necessary to keep boats off the breakwater during construction?
A. Well, it would be on the same principal as the Cockspur Island Training Wall. There is nothing to mark the Oyster Bed Training Wall at all. There was not even a cluster or buoy. The Oyster bed training wall was higher than the Cockspur Island training wall, and consequently more dangerous.
Q. As a matter of fact it was not a philanthropic act on the part of the contractors to put in those piles for the benefit of the public?
A. No, it was merely for their own benefit in advancing their work and facilitating their work in every way.
Q. Had you ever reported the number of piles driven until you were instructed to make the report upon the guide piles?
A. I did not report the guide piles because I didn't consider they should be paid for.
Q. You could not find anything about them in the specifications?
A. Nothing in the specifications, I didn't consider that they ought to be paid for them, and I didn't report them for that reason, and my letter shows I did not.

Q. And what reports you have made were in accordance with those instructions and based on them?

A. Yes, sir.

Cross-Examination.

Questions by Mr. Blair:

Q. I thought you were not governed by the specifications, it seems to me a few days ago you testified you didn't pay any attention to the specifications?

A. I testified I was not instructed to follow the specifications.

Q. But you were going to follow them about these guide piles?

1282 A. The specifications, as I understand it—

Q. Were you, or were you not?

A. The question of the specifications did not come up in regard to them.

Q. So you followed the specifications about guide piles, but you were instructed not to follow the specifications in regard to mats?

Judge-Advocate: He says they were not mentioned in the specifications, how could he follow anything not in the specifications?

Q. You looked in the specifications to see what was mentioned?

A. I knew it.

Q. You must have looked into them sometimes if you knew it.

A. Certainly; I certainly posted myself on the specifications and understood them thoroughly.

Q. You were not going to follow the specifications because you were not going to pay for guide piles because they were not mentioned in the specifications?

A. I said I didn't intend to report them.

Q. Did you, yes or no? Never mind an essay, Mr. Cooper, you can give that to the Judge-Advocate when he asks for the evidence, just give me plain yes or no?

A. I dont believe I understand you, I have forgotten now.

Q. You were not going to follow the specifications because you were not going to pay for the guide piles because they were not mentioned in the specifications?

A. I dont know whether that was your question or not, I suppose so.

Q. You were not going to pay for the guide piles, or recommend their payment because they were not mentioned in the specifications?

A. I dont believe I understand what you mean.

1283 You were not going to pay for guide piles, or recommend their payment because they were not mentioned in the specifications. That is it, is it?

A. Yes, sir.

Q. Now, you say you read the specifications to find that out. Did you, or did you not read the specifications?

A. I did not read the specifications to find that out because I already knew it.

Q. You must, at some period of your existence have read the specifications to know that fact?

A. Certainly; several times.

Q. In answer to my question, did you, or didn't you read the specifications to find that out? What do you say?

A. I say no.

Q. You read them for some other purpose, did you?

A. Yes, sir.

Q. Then you remembered?

A. Yes, sir.

Q. That the guide piles were not mentioned in the specifications; that's it, is not it?

A. Yes, sir.

Q. That is what you mean?

A. Yes, sir.

Q. You were governed by the specifications to that extent that you were not going to pay for something that was not mentioned in the specifications?

A. The question of paying didn't occur to me at all.

Q. Were you governed by the specifications to the extent that you were not going to recommend payment for something not in the specifications?

A. Yes, sir.

1284 Q. You were?

A. Yes, sir.

Q. And you were not governed by the specifications, so far as they applied to the making of mats?

A. Yes, sir.

Q. That's true too, is it?

A. Yes, sir.

Judge-Advocate: You were governed by special instructions in both instances, were you not, Mr. Cooper?

A. Yes, sir, I followed the specifications where I had no special instructions. If I had special instructions that were contrary to the specifications I followed the special instructions in every instance.

Judge-Advocate: I so understood you.

Here the Court at 2.45 p. m. adjourned until to-morrow morning, February 10, at 11.00 a. m.

THOMAS F. BARR
Col. & Asst. Judge Adv. Genl
Judge Advocate

1285 United States Court Room,
Savannah, Georgia,
February 10th., 1898.

The Court met pursuant to its adjournment of yesterday at eleven o'clock this morning.

Present:

All the members of the Court and the Judge Advocate. The accused, his counsel, and the Reporter, G. T. Cann were also present.

Judge Advocate:—I offer in evidence General Orders No. 6, Headquarters, Corps of Engineers, United States Army, Washington, D. C., April 17, 1897, and will spread upon the record only a part of it. The whole will be attached to the record.

(reading);—"In the case of River and Harbor Works, these summaries should state—

1. The original condition of the navigable channel way, harbor, or locality for which appropriations for improvement have been made, as to depth, width, and general availability for purposes of commerce.

2. The originally adopted project for the improvement and any important amendments, alterations, or additions, with brief reference to authority for such changes or additions and for changes in estimated cost.

3. The amount expended thereon up to the close of the fiscal year ending June 30, 1896.

4. The condition of the improvement, its availability or adaptability for the purposes of navigation and commerce, at that date." And to another provision, (reading) "Attention is specially invited to the requirements of General Orders No. 7, September 22, 1891, from these Headquarters,

that no modification of the approved project or plan for any work, or increased estimate for completion of any project, shall be submitted in the annual report of any officer
1286 without specific prior approval and authority of the department in each case".

"By command of Brig. Gen. Wilson:

JOSEPH E. KUHN,
Captain Corps of Engineers"

Judge Advocate:—This will be attached to the record and marked Exhibit 237.

JOHN W. O. STERLY, recalled as a witness for the prosecution, having been previously duly sworn, testified as follows:

Direct Examination.

Questions by the Judge Advocate:

Q. Mr. Sterly, what is that book?

A. That is Savannah Harbor Letter book, B, containing letters from Oct. 31, 1885 to Feb. 26, 1887.

Q. One of the official records of the Engineer Department?

A. Yes, sir.

Judge-Advocate: This, may it please the Court, is the letter book from which the counsel read the other day, the different responses which had been made to applications for specifications. Through inadvertence, probably, they failed to call for the requests, and had they done so, they would have learned, as I stated to the Court, that no letters of request are found in the year 1884, an index of papers made up here that were received from Gen. Gillmore's office, shows no receipt of any of any of those letters; there are other letters here, however, showing what was called for and to which the responses were read by Mr. Rose, and the letters are here now and opposite the answers that were made to them. These letters, I believe, all ask for specifications, and if it is conceded by the counsel who have examined the
1287 the letters, I will not spread them upon the record.

Mr. Rose: Just let me look at them again; I did not know what object you had, or on what line they were. Of course, we would like to read them. (Here the papers are handed by the Judge Advocate to counsel for the accused

for examination and returned by them to him after examination)

Judge-Advocate: The counsel, I understand, concede that in these letters which are here, that all ask for specifications and forms in the plural, and that serves the purpose of introducing the evidence for me, and as counsel and the Court both understand that the requests for 1884 had not been found, we have had the responses read, but the requests are not on file in the office.

Judge-Advocate: I offer in evidence and read,—

"United States Engineer Office,
River and Harbor Improvements and Fortifications on South Atlantic Coast, Fortifications on Staten Island;
New York Harbor.
Army Building,
New York, Sept. 15, 1886.

1st Lieut. O. M. Carter,
Corps of Engineers, U. S. A.
Savannah, Ga.

Sir:

The advertisements for proposals for works in your District should appear in the Savannah Morning News tomorrow.

The specifications are in the hands of the printer and a number of copies will be sent you as soon as they are received.

If you have no blank forms of proposals, & Genl. Instructions to Bidders, please apply for a supply, or refer intending bidders to this office, and they will be forwarded to them direct.

Very respectfully,
Your obt. svt.,
JAMES R. GILMORE."

1288 Mr. Rose: I would like to call the attention of the Judge Advocate and of the Court to the fact that the advertisements referred to in that letter, which is dated the 15th, the letter directing the advertisements to appear in th newspapers on 16th, the advertisement as printed is dated Sept. 16, 1886, for bids to be opened on the 30th, of September, leaving 14 days from the date of the first publication.

Judge-Advocate: Fourteen days. And at that time it appears to have been the practice to have given short terms of notice to prospective bidders, or to those who might become

bidders. There is no doubt the practice was as the counsel claims at that time.

Mr. Rose: The specifications were not printed then, until after the 16th, and it also appears that there has been no change in the rule or requirement with reference to time of advertisement, since 1882—1881, by Mr. Tweedale's testimony.

Judge-Advocate: The officer is dead but his methods may still be criticised. "The evil that men do live after them".

Mr. Rose: It is not always 'the good that dies with them."

Judge-Advocate: This is a paper that has been identified by the Officer of the War Department, that came with it, I offer it in evidence, (Reading)

"Subject, Repairs to Training Walls, etc., Savannah Harbor, Georgia, United States Engineer Office,

Savannah, Ga., Oct. 13, 1896.

"Brig. Gen. Wm. P. Craighill,
Chief of Engineers U. S. Army,
Washington, D. C.

General:

During the recent hurricane here, a Norwegian bark was blown against the Garden Bank Training Wall, completely wrecking the snag boat, Ocmulgee, which was moored there and breaking the piling and waling pieces of the training
1289 wall. Minor injury was done to the pile training walls at Marsh Island, Barnwell Island and Elba Island. It is important that the injury done at those places be repaired at once, that the brush piling may not be washed out. The cost of the necessary repairs will not exceed $3,000.

I have the honor to request authority—to execute those repairs, by informal agreement or in open market, the prices for the necessary pile work, limber, iron, brush fascines, and stone, not to exceed those paid in the contract recently completed, viz—: $1.60 per lineal foot for pile work; fender piles, $50 per cluster; sawn timber, $30 per M. feet; iron bolts, 5c per pound; fascines, $1.60 per cubic yard, and stone, $2.95 per cubic yard, payment to be made from the appropriation for improving Harbor at Savannah Georgia.

Very respectfully,
Your obedient servant,

O. M. Carter,
Capt. Corps of Ebgrs. U. S. A."

"1st, indorsement,

Office Chief of Engineers, U. S. Army,

Oct. 17, 1896.

"Respectfully returned approved. When such record as may be necessary has been made, this paper will be returned to this office.

By command of Brig. Gen. Craighill,:

A. MacKenzie,

Lieut. Col. Corps of Engineers."

2nd, indorsement.

United States Engineer Office,

Savannah, Ga., Oct. 19, 1896.

"Respectfully returned to the Chief of Engineers, U. S. A., Washington, D. C., Record made.

O. M. Carter,

Capt. Corps. of Engrs., U. S. A."

Q. What is that paper, Mr. Sterly?

1290 A. That is Mr. Cooper's report of operations for mattress and stone work, Dec. 10th, to 20th, 1896, Savannah Harbor, for work done at Dam 31.

Q. And the red ink there?

A. Seven piles to be used as guide piles, and in red ink, "See Garden Bank Report".

Q. Whose writing is that?

A. Capt. Carter's.

Judge Advocate: I offer in evidence and read, Report of work done on dam 31, from Dec. 10, to 20, 1896, by the Atlantic Contracting Company, under contract of October 8, 1896. The only work reported is seven piles to be used as guide piles, and the total for the 20 days, seven guide piles with an asterisk and note in red ink, "See Garden Bank Report", signed by A. S. Cooper. The witness testifies that the memorandum in red ink is in the handwriting of Capt. Carter. And on the back of the report, signed by A. S. Cooper, "I have the honor to report that work was started on dam 31, this ten days by driving seven guide piles." A copy of this will be attached to the record and marked Exhibit 238.

Q. What is that paper, Mr. Sterly?

A. Mr. Cooper's report for work done at the breakwater between December 20th, to 31st, 1896, showing that four piles were driven for survey station.

Q. What is the memorandum there in red ink, whose writing is that?

A. Capt. Carter's.

Judge-Advocate: I offer in evidence this report only for the purpose of showing that four piles were driven for survey station, at the detached extension of oyster bed training wall, to which there is an asterisk against the 4, and there is this mark in red ink, "See Garden Bank Report",
1291 which the witness testifies is in the handwriting of the accused, and the total report on the bank is as follows:— "I have the honor to submit my report of work done on the detached extension of the oyster bed training wall during Dec. 20 to 31, 1896, Besides other work there was four piles driven at the in-shore end of the work and built into a survey station for which I would recommend that the contractor be paid." A copy of this will be attached to the record and marked 239.

Q. What is that paper?

A. Mr. Conant's report for pile work done at Savannah during December 11, to 20, by the Atlantic Contracting Company, at Garden Bank.

By the Court: 1896?

Judge Advocate: Dec. 11 to 20, 1896. I offer in evidence and read this report of E. R. Conant Inspector, under date of Dec. 20, 1896,—"Report of Work done at Garden Bank, showing linear length of dam completed, 24 feet on the 14th, and on the 15th, eight feet ,making a total for ten days of thirty-two feet; the total for the month and previously reported, none, total for the month, thirty-two.

By the Court: Thirty two piles or thirty two feet?

Judge Advocate: Thirty two feet of dam.

By the Court: Is that built or repairs?

Judge Advocate: Repair work on training wall and tie piles for Angler and Tocoa. With this report on the back, "I have the honor to submit the following report of repair work on Garden Bank training wall, during Dec. 11, to 20, 1896. Eight piles were driven. making 32 linear feet of dam". Signed "E. R. Conant, Inspector." A copy of this will be attached to the record and marked Exhibit 240.

Q. What is this paper, Mr. Sterly?

A. Mr. Conant's report of pile work, Dec. 21st, to
1292 31st, Garden Bank training wall.

Q. Report of work upon what?

A. The number of piles driven in linear length of dam completed.

Q. Garden Bank training wall. I see there are previ-

ously reported 8 piles being 32 linear feet of dam,—that is that report is it not?

A. Yes, sir.

Q. I see a memorandum, "Eleven piles, oyster bed, and 31 inclosed in brackets, See reports, 44" feet added, in whose handwriting is that?

A. Capt. Carter's.

Q. Making 76 feet of dam?

A. Yes, sir.

Q. "O. M. C.", that is O. M. Carter?

A. Yes, sir.

Q. And no work was done during the days that the report covers. I offer this in evidence; it is signed by E. R. Conant, Inspector, Dec. 31, 1896, and suggests that the Court look at this and the two preceeding papers. (Here the papers are handed around among the members of the Court).

Mr. Blair: It is admitted, Colonel, that the defendant put the red ink writing there.

Judge Advocate: It is also testified to.

Mr. Blair: I was simply saving time; I did not see why the Court should look at it.

The President: What is that?

Judge-Advocate: He stated that it was conceded that the defendant made the red ink writing. I desire that the Court look at these. It was not a hasty matter, but in writing.

Counsel for the Accused: Where is the voucher that accompanied the report?

Judge-Advocate: The voucher will be forthcoming in a moment.

1293 Q. What are those two papers, which I hand you, Mr. Sterly?

A. They are office computations for work done in Savannah Harbor, during Dec. 1896; work on breakwater and repair work.

Q. Well, explain what they are fully.

A. This paper here is the office computation for the repair work at Garden Bank training wall, and it shows that there were 5,975 feet of B. M. sawed timber used for waling and cross ties, at $30, $179.25; 828.1 pounds of iron bolts at 5c, $41.41; 19 tie piles equal to 76 linear feet of piles at $1.60, $121.60. There was originally eight tie piles, equal to 32 linear feet, giving $51.20; this wa corrected to 19 tie piles, equal to 76 linear feet, at $1.60, $121.60; 85 miles corrected to 115 piles, cut off at the required height, at 10 cents,

$8.50, corrected to $11.50, giving a total of $350.76, corrected to $353.76, and that is checked by myself, that is, as to the correctness of the computation.

Q. As to the correctness of the computation?

A. Yes, sir.

Q. Where "8" in red ink is erased and "19" in black ink inserted, is that your handwriting?

A. No, sir.

Q. Whose is that?

A. Capt. Carter's.

Q. Where the 32 is erased and 76 placed there, is that yours?

A. No, sir, that is Capt. Carter's.

Q. That raising from $51.20 to $121.60, is that also Capt. Carter's?

A. Yes, sir; the ten cents is mine and the $8.50 is mine; the $350.76 is mine, and the balance is made out by Mr. Gieseler's. The $350.76 is in my handwriting. That is the correct footing to make up the voucher.

1294 Q. Now, explain the second one.

A. This is an office computation, Dec. 1896, for Savannah Harbor, breakwater, 21,356.67 square yards of mats, and for 1,622.09 cubic wards of stone, fourth class, then there is the office computation, or multiplication, giving the total, of $25,124.96, less ten per cent retained $2502.50, leaving a total of $22,612.46.

Q. Whose figures are those?

A. In red, Mr. Gieseler's; in black, Capt. Carter's.

Q. I see in there four piles were driven for transit station; I see there in pencil, "See Garden Bank Report, C." whose writing is that?

A. That is Capt. Carter's handwriting.

Q. What does the next sheet show?

A. The next sheet shows, Savannah Harbor, Cockspur training wall, Dec. 1896, 136.50 cubic yards of stone, fourth class.

Q. And the initial "C"?

A. Means that is correct, Carter.

Judge-Advocate: Blue prints of these papers will be attached to the record, marked Exhibits, 241 and 242.

(Here the papers are handed Mr. Blair)

Mr. Blair: There is no objection to these; it seems to be the personal property of the accused; it seems to be in the possession of the Judge Advocate.

Judge-Advocate: It is a retained voucher; the orginal voucher is in the Department in writing, I presume, in calling for that document, my predecessor failed to notice it. It was found in the office. It was not turned over to me any more than all the papers in the office were turned over for my use.

Mr. Blair: It is not an office paper, as I understand it.

Judge-Advocate: It was a paper found in the office.

Mr. Blair: It is the property of the accused, as I understand it.

By the Court: Is it a copy of this report?

1295 Judge-Advocate: It is a duplicate voucher.

Mr. Blair: It is a retained duplicate voucher, belonging to the accused, which seems to be in the possession of the Judge Advocate.

Judge-Advocate : And came to me in the course of my professional duties.

The Court: You say a duplicate is on file in Washington?

Q. What is that?

A. A voucher for the Atlantic Contracting Company for piling, timber, iron bolts &c., $353.76.

Judge-Advocate: I make the statement in regard to this, this was not found among the private papers of the accused, it was found here in the office. He appears to have left it. With his consent, I will put it in evidence.

Mr. Blair: We have no objection to letting it go in evidence.

Judge Advocate: I can get the original, if it is so desired.

Mr. Blair: We want a copy put in evidence, if you please, Colonel, because the original belongs to the accused.

Judge-Advocate: A copy will certainly go in.

Q. Who made up that voucher, Mr. Sterly?

A. That voucher was made out by Mr. Austen, in the office.

Q. From what data?

A. From the office computation.

Q. The amount therein stated agrees with the computations?

A. Yes, sir.

Judge-Advocate: I offer in evidence and read, first the statement of account, Savannah, Ga., Dec. 31, 1896,

"United States Engineer Department, to The Atlantic Contracting Company, dr. aggregating $353.76" and the letter attached thereto from Capt. Carter to Brig. Gen. Craighill,

dated October 13, 1896, and the indorsement also at-
1296 tached thereto, and the account also attached on Form 8; copies of these papers will be attached and marked, Exhibit 243.

Judge Advocate: And this also, Mr. Blair and Mr. Rose, was found among the retained papers of the accused.

Capt. Carter: This is not mine, it is an office record.

Q. What is this paper, which I hand you, Mr. Sterly?

A. This is Capt. Carter's report of operations, improving harbor, of Savannah, Ga., for Dec. 1896.

Judge-Advocate: I offer in evidence and read an extract from the report of operations for the month of Dec. 1896, signed by the accused, as a copy of the paper will be attached to the record, I will only read this extract:

"Operations during the month of December, 1896. Property has been cared for and miscellaneous office work done. In repairing Damage to Garden Bank training wall, 19 piles were driven, making an equivalent of 76 linear feet of pile work. As waling pieces and cross ties 5,975 feet of sawn timber, were placed in the work, for the fastening of which 828.1 pounds of iron bolts were used. One hundred and fifteen piles were cut off as required. The Atlantic Contracting Company began work under a contract of October 8, 1896, on December 3, 1896. There were placed in the breakwater at Tybee Roads 21,356.67 square yards of mattresses, and 1,622.09 cubic yards of fourth class stone. On the Cockspur Island training wall there were placed 136.50 cubic yards of stone. (Fourth class). Mr. Rittenhouse R. Moore, under his contract of October 6, 1896, was required to begin dredging on or before December 24, 1896. He has not yet begun work." Signed, "O. M. Carter, Capt. of Corps of Engrs. U. S. A. Jan. 9, 1897." A copy will be attached to the record and marked Exhibit, 244.

Judge-Advocate: That is of the same character as the papers I have been using. (Here a paper is handed to
1297 counsel for the accused).

Q. What is that paper?

A. Mr. Daniel's report of pile work done on dam 31 during February 1st to 10th, 1897.

Q. Who is Mr. Daniels.

A. He was an inspector in the employment of the office.

Q. Please state to the Court how many piles that indicates to have been driven?

A. 34 piles.

Q. How made up?
A. 17 piles driven on the 8th of February, 5 driven on the 9th of February, 12 on the 10th of February, giving a total of 34 piles.
Q. What is that memorandum in the column of "Remarks?"
A. "Single row of piles to mark line of dam".
Mr. Rose: Who made that report?
Judge-Advocate: Signed, as he testified, by T. J. Daniels.
Q. Is that Mr. Daniels handwriting?
A. Yes, sir.
Judge-Advocate: Mr. Daniels report reads "I have the honor to submit reports of pile work done on this dam, no mats being sunk during past 10 days". It is dated February 10, 1897. A copy of this will be attached to the record and marked "Exhibit 245".
Q. What is that paper?
A. Mr. Daniels' report for the second 10 days in February, 1897, showing that 26 piles were driven, or a total of 60 during the month.
Q. How many had previously been driven?
A. 34, giving a total of 60 during 20 days.
Q. What are those initials?
1298 A. "M. A. C." The check mark showing that the computation is correct.
Q. That is simply a check of the computation as on the report?
A. Yes, sir.
Q. Judge-Advocate: 26 for the month and 34 previously reported for 10 days, previously reported 34, a total of 60, the report is signed by T. J. Daniels, simply is. "I have the honor to submit reports of pile work done on this dam", that is dam 31. A copy of this will be attached to the record marked "Exhibit 246".
Q. What is that?
A. This is Mr. Daniels report for February 21 to 28, 1897 for work done at dam 31. He reports that no work was done, that the total for the month shows the number of piles driven, 60.
Q. Previously driven?
A. Yes, sir.
Q. Previously, during the month, and no work was done.
A. During this last report from the 21st to the 28th of February.

Judge-Advocate: This is signed by T. J. Daniels, inspector, who reports "I have the honor to submit report for past 8 days. No work being done". Signed T. J. Daniels, Inspector; and in the report "Previously reported 60". A copy of this will be attached to the record and marked "Exhibit 247".

Q. What is that paper, Mr. Sterly?

A. Office computations for work done during February 1897, Savannah Harbor on dam 31, the breakwater, Cockspur Island training wall, and it has a summary of the work done.

Q. That is for dam 31?

A. For dam 31, for the breakwater, for Cockspur Island training wall, and here is a summary (indicating).

1299 Q. I see there in pencil "Pay in open market 240 linear feet pile work at 1.60, $384.00"?

A. Yes, sir.

Q. In whose writing is that?

A. The 60 piles at 2.40—

Q. Wait a moment, I asked you whose writing is that in?

A. "Pay in open market," Captain Carter's; 240 linear feet pile work at 1.60, $384.00" in my handwriting.

Q. That is your handwriting?

A. Yes, sir.

Q. I see a line drawn through a statement on the same account, why was that drawn through there?

A. Captain Carter drew the line through "60 piles equal 240 feet pile work, 1.60, $384.00."

Q. The same amount?

A. Yes, sir.

Q. Who instructed you to place that memorandum on there?

A. The memorandum "240 linear feet pile work?"

Q. Yes, who instructed you to correct the computation leaving out $384.00 in one place and providing for its payment in another?

A. Captain Carter, there is the remark "Pay in open market."

Q. Was that his remark to you?

A. Yes, sir; pay in open market.

Q. But you said that you wrote that?

A. No, sir; Captain Carter wrote that.

Q. I misunderstood you then, that "Pay in open market" is in Captain Carter's handwriting?

A. Yes, sir.

Judge-Advocate: A blue-print of that paper will be attached to the record marked "Exhibit 248."

Q. What was the payment to be made in open market, Mr. Sterly?

A. The payment in open market was, it should be 1300 charged on any repair work done on Garden Bank and those places. It should be charged as repair work.

Q. Who made up that voucher?

A. The voucher was made by a clerk in the office from that computation.

Q. From that computation?

A. From that computation.

Q. This $384.00?

A. $384.00, equal to 240 linear feet of pile work at $1.60.

Judge-Advocate: This is a retained voucher found in the office of the Engineer here. The accused states it is his personal property. I presume all his retained vouchers would be. You left them here when you went away (To the accused)?

Captain Carter: They were taken from me.

Judge-Advocate: Do you object to my using it, I will get the original?

Captain Carter: Oh, no.

Q. This was found in the Engineer's office, Mr. Sterly?

A. Yes, sir.

Judge-Advocate: I offer this in evidence.

Here the Judge-Advocate reads "Form 8, Voucher No. 27, Month of March, 1897, Appropriation for Improving Harbor at Savannah, Goergia, applied to that work, accounts of O. M. Carter, Capt. Corps of Engineers; Paid to the Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for pile work, amount $384.00, paid by check No. 270492, dated March 10, 1897, for $384.00, on U. S. Asst. Treasurer, New York, N. Y."

Judge-Advocate: A copy of this will be attached to the record and marked "Exhibit 249."

Judge-Advocate: I think I failed to state in regard to the previous voucher that it was for $353.76, that it was paid by check No, 270439, dated January 12, 1897, for $353.76, 1301 on the U. S. Asst. Treasurer, New York.

The Court: That is The Atlantic Contracting Company?

Judge-Advocate: Yes, both the Atlantic Contracting Company.

Judge-Advocate: I offer in evidence and read from the report of operations for the month of February, 1897, for Improving Harbor of Savannah, Georgia, a report of the accused, I will read this extract "Operations during the month of February, 1897, property has been cared for and miscellaneous office work done. The Atlantic Contracting Company, continued operations under contract of October 8, 1896. There were placed in the Cockspur training wall 3,345 square yards of brush mattresses and 173.21 cubic yards of fourth-class stone.

There were placed in the breakwater at Tybee Roads 17,500 square yards of brush mattresses and 1,266.58 cubic yards of fourth-class stone.

In dam No. 31 there were placed 2,306.66 square yards of brush mattresses, and 105.2 square yards of fourth-class stone.

In executing repairs 60 piles were driven as guides, being an equivalent of 240 linear feet of pile work.

Mr. Rittenhouse R. Moore, under his contract of October 6, 1896, has continued dredging in Rams Horn Creek. There were removed during the month 11,326 cubic yards of material. Progress has not been satisfactory.

An examination was made of a part of the site of the breakwater at Tybee Roads." Signed O. M. Carter, Captain Corps of Engineers, U. S. A., Savannah, Georgia, March 10, 1897.

A copy of this will be attached to the record and marked "Exhibit 250."

Q. What is that paper?

A. Mr. Daniels' report from May 1st to 10th, 1897, for mattresses and stone work done at dam 31, showing that 17 1302 guide piles were driven.

Q. There are some changes in that report. That is in making up?

A. Yes, sir; calculations and changes made to correct the report.

Q. And 17 guide piles that shows?

A. Yes, sir.

Q. That is signed by Mr. Daniels, the inspector?

A. Yes, sir.

Judge-Advocate: I offer this in evidence, the report of Mr. Daniels, for work done at dam 31, from May 1st to 10th, 1897, by the Atlantic Contracting Company, showing that 17 guide piles were driven. His report says "I have the honor to

submit reports for past 10 days," signed T. J. Daniels, Inspector. A copy will be attached to the record and marked "Exhibit 251."

Q. What are these two papers which I hand you?

A. They are Mr. Keating's reports for work done. The first is from May 10th to 20th, 1897, for work done at Elba Island Spur Dams, and the next one is May 21st to 31st, Elba Island Spur Dams.

Q. What do you find there as piles?

A. Linear length of dam completed 12 feet.

Q. That is the last report, how about the first one?

A. 12 feet.

Q. 12 feet?

A. Yes, sir.

Q. That work done between May 11th and May 20th?

A. Yes, sir.

Q. How many feet of dam completed in a second report?

A. There were none completed, there were carried forward 12; during the month 12.

Judge-Advocate: Those were paid under an authority from the Chief of Engineers in open market. Well, never mind, I have it here, Mr. Sterly.

1303 Judge-Advocate (To the counsel for the accused) He is another office computation (Handing papers to the counsel).

Q. You don't know about the authority about paying for that work at Elba Island Spur dam?

A. Not without looking at the other papers.

Judge-Advocate: I offer them in evidence. The report of P. J. Keating was "I have the honor to submit report of repairing pile work at Elba Island spur dams during May 11 to 20, 1897." And also, for the 11 days ending May 31, 1897, that one is not signed on the outside, but is signed on the inside. Copies of these will be attached to the record and marked Exhibit 252" and "Exhibit 253."

Q. What are these papers?

A. Office computations for work done during the month of May, 1897.

Q. Explain them.

A. For work done at the breakwater and for repairs. The work done at the breakwater shows that there were done 36,058.09. Repairs Jones Island's spurs, 32 linear feet of dam. and Elba Island spurs 12 feet, corrected to 80, giving a total of 44 linear feet, corrected to 112, 7 cluster fenders and 2 1/3

cluster fenders, giving a total of 9 1/3 cluster fenders, 44 linear feet of pile dam at 1.60, $70.40, corrected to 112 linear feet of pile dam at 1.60, giving $179.20. 9 1/3 clusters of fender piles at $50.00, total $466.67, a total of $537.07, corrected to $645.87.

Q. I notice that those corrections are in red ink and the original figures in black ink, erased and the corrections put in in red ink. Whose figures are those?

A. Those are Gieseler's.

Q. Mr. Geiseler, an Engineer in the office?

A. He made up the office computations.

1304 Q. Explain that one?

A. Office computation, May, 1897, work done at the breakwater, 15,040.01 square yards of mats, and on dam 31 19,462.12, giving a total of 44,502.13 square yards of mats, and there were used of fourth-class stone on the breakwater 1,693.47 cubic yards, and on dam 31 956.54 cubic yards, giving a total of 2,650.01. The computation is for 34,502.13 square yards of mats at 95 cents, $32,777.02 and for 2,650.01 cubic yards of fourth-class stone at $2.75, $7,287.53, giving a total of $40.064.55, less 10 per cent retained, $4,006.46, leaving $36,058.09. And the repairs on Jones Island's spurs, linear feet of dam, 32 feet; cluster of fenders 7. Elba Island spurs 12, corrected to 80 linear feet, 2 1/3 clusters of fenders, giving a total of 44, corrected to 112 linear feet and 9 1/3 clusters of fenders. 17 linear feet had been omitted in the first computation, therefore there is a correction of 44 linear feet of pile dam at 1.60, $70.40, corrected to 112 linear feet of pile dam at 1.60, $179.20. 9 1/3 clusters fender piles at $50.00, $466.67, giving a total of $537.07, corrected to $645.87.

Q. That 68 and 44 appear there in red ink. After the addition of them together you entered that 112?

A. Yes, sir.

Q. 68 feet is equivalent to 17 piles?

A. Yes, sir.

Q. And that had been omitted in this computation?

A. Had been omitted.

Q. There is a reference there in red ink, what does that say?

A. "68 feet of pile dam are an equivalent for 17 guide piles driven on dam 31."

Q. Whose writing is that. Mr. Geiseler's?

1305 A. That is Mr. Geiseler's.

Judge-Advocate: Blue prints of these will be attached to the record, marked "Exhibits 254, and 255."

Judge-Advocate: These are your original vouchers, Captain, you have no objection to their use (To the accused)?

Captain Carter: No, sir.

Judge-Advocate: These are retained vouchers belonging to Captain Carter and his property, I suppose to which he is entitled.

Q. What are these papers?

A. These are vouchers for repairs to training walls and spur dams paid to the Atlantic Contracting Company.

Q. Well, take the first one.

A. Voucher No. 7, for June, 1897, paid to the Atlantic Contracting Company for repairs to training walls and spur dams, $537.07, paid by check No. 270527, dated June 4, 1897, on the United States Assistant Treasurer, New York. That is for 44 linear feet of pile dam, and for 9 1/3 clusters of fender piles.

Q. Now, what is that account?

A. This is a voucher for 68 linear feet of pile dams at 1.60 for $108.80, which were omitted in the previous voucher, the voucher is for 112 linear feet of pile dam, 44 linear feet of pile dams paid for on voucher June 7, 1897, leaving 68 linear feet of pile dams at $1.60, equal to $108.80, and paid to the Atlantic Contracting Company by check No. 128676, dated June 19, 1897, on the Merchants National Bank, Savannah, Georgia.

Judge-Advocate: I offer in evidence and read those two papers.

Here the Judge-Advocate offers and reads Voucher No. 7, June 1897, appropriation for Improving Harbor at Savannah, Georgia, applied to that work, accounts of O. M. Carter, Capt., Corps of Engineers, paid to the Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for repairs to training walls and spur dams, amount $537.07. Paid by check No. 1306 270527, dated June 4, 1897, $537.07, on United States Assistant-Treasurer, New York, and voucher No. 21, month of June 1897, appropriation for improving Harbor at Savannah, Georgia, applied to that work accounts of O. M. Carter, Captain Corps of Engineers, paid to The Atlantic Contracting Company, Edward H. Gaynor, Treasurer, for repairing training walls, and so forth, amount $108.80, paid by check No. 128676, dated June 19, 1897, for $108.80, on Merchants National Bank, Savannah, Georgia, copies of which are to be attached to the record and marked "Exhibits 256 and 257".

The Court: What entry is there in the column headed "Ap-

plication"? (This question being asked with reference to "Exhibit 256").

Judge-Advocate: "Repairs to training wall and spur dams.

Q. What is that paper?

A. Captain Carter's report of operations for the month of May 1897 for improving the harbor at Savannah, Georgia.

Judge-Advocate: I offer in evidence and read an extract from it "Operations during the month of May 1897, property has been cared for and miscellaneous office work done.

The Atlantic Contracting Company has continued operations under contract of October Eighth, 1896. There were placed in the breakwater at Tybee Roads 15,040.01 square yards of brush mattresses, and 1,693.47 cubic yards of fourth-class stone. There were placed in dam No. 31 19,462.12 square yards of brush mattresses, and 956.54 cubic yards of fourth-class stone; 17 piles were driven as guides.

In executing repairs to the Jones and Elba Island spur dams 44 linear feet of pile dam were constructed and 9-1/3 clusters of fender piles were driven.

1307 Mr. Rittenhouse R. Moore, under his contract of October 6th, 1896, has continued dredging in Wright's River. There were removed at this place 36, 750-3/10 cubic yards of material during that month. The survey of the channel from the city to the sea was completed on May 20th." Signed O. M. Carter, Capt., Corps of Engineers, U. S. A., Savannah, Georgia, June 10, 1897.

Judge-Advocate: That will be attached to the record as "Exhibit 258".

Cross-Examination.

Questions by Mr. Rose.

Q. Mr. Sterly, I understood you to say that on this work that the piles which you have been testifying to, are paid for in open market; am I right?

A. The piling in open market—it is under authority for repair work in open market under former contract prices.

Q. And not under the contract of 1896?

A. No, sir; the work to be done at certain places.

Mr. Rose: I read from a copy of a report of Captain Carter for the year 1897, being Appendix N of the Annual Report of the Chief of Engineers on page 1595 "There were driven on Oyster Bed training wall four piles to serve as guides, and

there were driven on dam number 31, 75 piles for the same purpose. All together, there were, therefore, driven 79 piles to serve as guides, which are an equivalent to 316 linear feet of pile dam.

In repairing the Jones Island and the Elba Island spur dam there were driven 32 piles, making 128 linear feet of pile dam; there were also driven 9-2/3 clusters of piles, making a total of 61 piles.

In repairing the Garden Bank training wall there were driven 73 piles, making 292 linear feet of pile dam; there were also driven 7 clusters of piles, making a total of 94 1308 piles; there were used 11,850 feet B. M. of timber, as walling and ties, and 1,632.7 pounds of iron bolts to secure them to the pile work.

All the above repair work was done in open market by the Atlantic Contracting Company at the prices of their contract of October 22, 1892."

Re-direct Examination.

Questions by the Judge-Advocate:

Q. Was there any authority given for repair work on dam 31?

A. No, sir.

Q. That was the regular contract in operation there?

A. That was the regular contract for stone and mattress.

Mr. Rose: Was it paid for under contract or in open market, the pile work on dam 31; now just answer that question Mr. Sterly?

A. It was paid for in open market, but in repairs.

Judge-Advocate: Repairs to what?

A. To some other place.

Judge-Advocate: To what place?

A. Not on dam 31.

Judge-Advocate: On one of the places for which authority had been received from the Chief of Engineers to make repairs?

A. To make repairs.

Here the Court at 12.35 o'clock P. M. takes a recess until 1.00 o'clock P. M.

The Court met pursuant to recess at 1.00 o'clock, P. M.

Present:

All the members of the court and the Judge-Advocate.

The accused, his counsel, and the reporter G. T. Cann, were also present.

Judge-Advocate: I call the Court's attention to the Ninth Specification to the charge of conduct unbecoming an officer and a gentleman, and offer in evidence a paper that has been identified by Mr. McCarthy. 1309

Here the Judge-Advocate offers in evidence and reads a letter from G. Paulding, dated October 2, 1896 to General William P. Craighill, U. S. A., in the matter of the R. P. Parrott Estate, with reference to property on Hutchinson's Island, and also the First, Second, Third, Fourth and Fifth endorsements on said letter.

Judge-Advocate: A copy of this communication will be attached to the record with the endorsements, marked "Exhibit 259".

Judge-Advocate: I offer in evidence a copy of the map accompanying Captain O. M. Carter's report to the Chief of Engineers of May 26, 1891, showing the proposed Harbor line of 1889. The upper black line and showing there the land proposed to be given to the owners as an equivalent for that to be relinquished by them. The court will notice the amount to be dredged away from the upper and lower lines.

The President: What is the date of that?

Judge-Advocate: That accompanied the report of the accused to the Chief of Engineers of May 26, 1891. A blue print copy will be attached to the record and marked "Exhibit 260".

Mr. Blair: The red ink was not put there.

Judge-Advocate: I was about to state that. The members of the Court have seen this map, I will state that the writing in red ink was placed there for my information and is not part of the map.

Judge-Advocate: The report referred to is as follows:

Mr. Blair: If the Court please, not that we object to the report, or to the reading of Washington's Farewell Address, or anything else, except that it takes up time. Now, the simple question on this specification is did Captain Carter make a false statement, knowing it to be false? What is he did make a report in 1891, or what if he did make a report in 1886, I submit that the matter is wholly irrelevant. The only question is under this specification he makes a state- 1310

ment which has been read to the court "when opperations were to begin excessive rentals were demanded by property owners". The allegation is in that specification that that statement is false and Captain Carter knew it to be false. I state again, as I stated before that the defendant here is under very great expense, and we desire, above all things, to have this matter shortened as much as possible. We do not object to that report of 1891 on any other ground, except simply irrelevance. If Captain Carter made a false statement, why let them prove it and what he did. We will admit that he made the report of 1891.

Judge-Advocate: The Court will probably want to read it at some time, and it is to be attached as a record showing the existing state of things and the improvements in contemplation. It was referred to in his endorsement to the Chief of Engineers; as to Mr. Paulding's letter, you will remember, he invites attention to that for consideration to know if it is now as it was on the date of the specification, which is alleged to be false.

Mr. Blair. Is there anything in the report of 1891 which tends to show that the statement by Captain Carter is true or false?

Judge-Advocate: The Court may perhaps have to pass judgment upon that question, I dislike to give my judgment of what his statement was.

Mr. Blair: Why not read the report of General Gilmore?

Judge-Advocate: Because General Gilmore is not before the Court and the accused is, and in the endorsement, which is alleged to be false he refers to this report and invites attention. It is to go on the record anyway, I think I'll read it.

1311 Here the Judge-Advocate reads the report of Captain O. M. Carter, dated May 26, 1891, on the cutting off a portion of Hutchinson's Island, Savannah Harbor, Georgia, Estate of Robert P. Parrot; G. Paulding, Executor, a copy to be attached to the record and marked "Exhibit 261", the report of the appraisers with reference to Kinsey is not read.

The President: The accused objects to the substance of this report?

Mr. Blair: There is no objection, if the Court please, except the frightful waste of time.

The President: You withdraw the objection then?

Mr. Blair: Yes.

Judge-Advocate: With "Exhibit 259", the Fifth endorsement referred to a report accompanying it of Pater C. Hains, Colonel Corps of Engineers, U. S. A., which has got misplaced and should have accompanied that report and I will read it and put it in as a part of "Exhibit 259".

(Here the report of Colonel Hains is read by the Judge-Advocate.)

Mr. Blair: Major Hains says "excessive rentals were required and he had examined the records.

Judge-Advocate: Yes, examined the records of the case and found that a part of the record.

Mr. Blair: Yes, and looked at the land.

Judge-Advocate: We are not trying Colonel Hains.

At this point Reporter G. T. Cann is releived by Reporter W. O. Tarver.

1312 At this point, 2.00 p. m., in the proceedings of the day, Reporter Geo. T. Cann was relieved by Reporter W. O. Tarver, who continued to report the proceedings until the adjournment of Court.

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* * * * *

1327 JACOB PAULSEN, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by the Judge-Advocate.

Q. What is your full name?

A. Jacob Paulsen.

Q. Do you live in Savannah?

A. Yes, sir.

Q. What is your occupation?

A. I am President of the Propeller Tow Boat Co. and also of The Savannah Dredging Co.

Q. I show you a map of Hutchinson's Island; will you point out the lots that are controlled by those Companies, or owned by them? Nos. 13, 14, 15, 16, 17 and fifty feet of 18 belongs to whom?

A. 13, 14, 15, 16 and 17 belong to the Propeller Tow Boat Co., and fifty feet of 18 belongs to the Savannah Dredging Co., and these (indicating on map) two lots belonged to the Savannah Dredging Co. but have been sold about a month ago, —about two hundred feet of them.

Q. How long have lots 14, 15, 16 and 17 been owned by the Propeller Tow Boat Co.?

A. 13 and 14,—they were bought later, and the other lots were owned by the Tow Boat Co. I guess twenty years ago. 13 and 14,—they were bought somewhere in 1885 or 1886.

Q. Do you remember whose estate 13 and 14 belonged to? What estate they were bought from?

A. No; we bought it from Colonel,—I forget his name.

Q. Was it Woodbridge?

A. I think he was representing the Woodbridge Estate.

Q. Now, did you ever own 18 and 19?

A. Yes, sir; the Dredging Co. owned 18 and 19.

Q. They do now?

A. Not now; they own fifty feet of 18; 200 feet has been sold.

Q. During what is known as the big contract, who owned lots 18 and 19?

1328 A. The Savannah Dredging Co.

Q. During that big contract, when the operations were to begin, did you have any conference with anyone as to the rentals that you should charge for the occupation of those lots when dredging was to go on?

A. I don't remember.

Q. Can you say you did not?

A. I don't remember that I had any talk with anybody about it.

Q. Did you ever establish the rental which you should charge?—ever decide upon the amount of rent you would charge the Government when they commenced operations for the improvement?

A. Yes, sir; it was long before that; I think that was in Gen. Gillmore's time.

Q. But I mean in 1892,—about the time when the contract was made in 1892?

Q. I don't remember, but I think that the contract that was understood would stand all right for 1892; the agreement rather. There was no contract.

Q. It was just a general understanding?

A. It was a general understanding.

Q. Did you make any demand for any rental from 1892 to 1896?

A. There was nothing done.

Q. You did nothing?

A. There was nothing done; no, sir.

Q. That applies to all that land controlled by you, the Propeller Tow Boat Co. and the Savannah Dredging Co.?

A. Yes, sir.

Q. You know Capt. Carter?

A. Yes, sir.

Q. You never made a demand of him, or of any other engineer officer, for a rental of any amount from 1892 to 1896?

A. No; I never made any demand.

Q. Did you ever take up any wharves, you or the 1329 Companies which you are President of, for purposes of speculation,—take possession of any wharves on the Island during that same period?

A. No, sir.

Q. Who were the owners of the Propeller Tow Boat Co.?

A. It is an incorporated company, incorporated under the laws of the State of Georgia, and has a good many stockholders.

Q. Are any of its stockholders present here?

A. It has more than I could mention.

Q. Are any of its stockholders present here besides yourself?

A. I don't know.

Q. Today?

A. I have seen some here this morning. I don't see any now.

Q. Are you looking in the right direction?

A. I don't know; I see Mr. Minis here; I know he is a stockholder.

Q. Look at this line of gentlemen here (indicating seats that the accused and his Counsel occupied) and say if you see a stockholder?

A. Capt. Carter is a stockholder.

Q. How long has he been a stockholder?

A. Twelve or thirteen years; I don't know exactly.

Q. How much stock does he own?

A. Capt. Carter owns one hundred and fifty shares.

Q. What is the par value of the stock?

A. The par value of the stock is one hundred dollars.

Q. What is its market value today?

A. I don't know.

Q. Is there any of it on the market?

A. There is no demand for any.

Q. Is there any sale for any?
A. No; I don't think so; there is no demand and no sale either.
Q. Has there been any profit upon it?
A. Not much of late.
Q. Has it ever been a profitable enterprise?
1330 A. Yes, sir.
Q. How much was the stock worth when Capt Carter became a stockholder?
A. I don't know.
Q. When was the Company organized?
A. It was organized, I think, somewhere along about 1882 or 1883; I don't know exactly.
Q. How long after the organization of the Company did Capt. Carter become a stockholder?
A. Shortly after Capt. Carter came here; I don't know when that was.
Q. Shortly after he came here?
A. Yes, sir; Capt. Carter has been a stockholder a long time.
Q. Was your stock quoted in the market at that time?
A. No, sir; it is a close corporation, and always has been.
Q. Always has been a close corporation?
A. Yes, sir.
Q. If any one wanted to get stock in it, could they get it?
A. When somebody wants to sell it.
Q. How could they find out?
A. Give it to a broker, and the broker would go around and sell it.
Q. Suppose anyone went to you as President of the Company, wouldn't you know about the value?
A. I would be a good man to go to.
Q. It has been a pretty successful enterprise?
A. Yes, sir; very.
Q. You have been quite well satisfied with it?
A. Yes, sir.
Q. It has not been one of your worst investments?
A. No, sir.
Q. You would not care today to give up your holdings in it?
A. I don't know about that; that depends on circum-

stances; if anybody brings money enough—you know money will buy most anything.

1331 Q. You say Capt. Carter bought his stock when?

A. Shortly after Capt. Carter came here.

Q. You don't recall the date?

A. No; I do not.

Q. Your stock books would show, I suppose?

A. Yes, sir.

Q. Do you know who he obtained it from?

A. No; that I do not know. I don't know who he bought it from; it has been a good long time ago; he might have bought it from me, for all I know.

Q. About that time, what was the stock worth?

A. At that time the stock was worth par.

Q. It was worth par at that time?

A. Yes, sir.

Q. And that was after Capt. Carter reached here that it was worth par?

A. Yes, sir.

Q. And for how long afterwards?

A. I don't know; may be a year or two.

Q. Well, it paid a good profit right along? It was a good investment for you for some years after that, was it not?

A. Yes, sir; very good.

Q. The books of the Company are still in existence?

A. Yes, sir.

Q. The Company is in existence?

A. Yes, sir; and flourishing, too.

Q. Your books show the profits year by year?

A. Yes, sir.

Q. There have not been many transfers of stock between parties, have there been?

A. Yes, sir; a good deal in former years.

Q. But from 1884 along up to 1890; were you doing a pretty good business?

1332 A. Yes, sir.

Q. Do you think that the stock could have been purchased any less from 1890 to 1892 than it could in 1885?

A. No; I don't think so.

Q. You don't think any of it could have been obtained at a less price?

A. No, sir.

Q. Where are the books,—in Savannah?

A. In the river; some of them might be out at sea; they are all in the water.

Q. You are speaking of the boats and I am speaking of the books?

A. Yes; I thought you said boats.

Q. The books of the Company?

A. They are in charge of the Secretary and Treasurer, Mr. Macauley.

Q. Mr. Macauley is your Secretary and Treasurer?

A. Yes, sir.

Q. He is now Secretary and Treasurer?

A. Yes, sir.

Q. And has been for a good many years?

A. Yes, sir.

Q. Can't you refresh your mind a little, and let me know who sold that stock to Capt. Carter?

A. I could not refresh it if I tried my best; I have been trying to think, but I cannot remember.

Q. Your stock book would show the name of the party from whom the transfer was made?

A. Yes, sir.

Q. That would hardly show the price?

A. No; it would not show the price.

Q. Have Capt. B. D. Greene and John F. Gaynor got stock in your Company?

A. No, sir; Capt. Greene has not; John Gaynor has.

Q. How about the Savannah Dredging Co., have they stock in that?

A. Yes, sir.

1333 Q. You have been in the dredging business a good while?

A. Yes, sir.

Q. And had some good, large, contracts?

A. Yes, sir.

Q. Is there any agreement among the Dredging Companies in these waters,—any business partnership, in order to facilitate their business?

A. I don't understand you.

Q. Is there any agreement among them as to a division of the work,—or the way to get work?

A. Am I on trial.

Q. No; indeed, I don't mean any reflection on you in the slightest degree.

A. Well, the question you asked me—

Q. It is a business proposition.

Witness; I beg the Court to protect me; I don't think I ought to answer that question.

Judge-Advocate: (Addressing witness) I would not say anything to irritate you or annoy or insult you in any way. The question I asked is a perfectly proper one, and it would be proper for you to answer. I am not charging you with any offense. I would not consider such a thing an offense. I would like to have you answer my question.

Witness: Does the Court say I must answer it?

The Court: What is your objection to answering the question?

Witness: The question is whether the dredging people have an understanding between themselves, I suppose to protect their mutual interests, and I am in and have been in the dredging business.

The Court: That is not a good excuse; answer the question.

Mr. Blair: I presume the Court will inform the witness,—I have no interest in it whatever,—that he is not compellable to answer any question that he does not desire to an-
1334 swer. I think the witness is under the impression that he is compelled to answer it.

The Court: On what ground?

Mr. Blair: As I understand the law, a Court Martial has no right to compel an answer from a civilian witness.

The Court: That is, that he can answer what questions he desires to answer?

Mr. Blair: I so understand the law. It has been so announced by an Attorney General.

The Court: He presents himself as a witness and is examined in part; he answers part of the questions, and can refuse to answer others?

Mr. Blair: I so understand the law. It is no concern of mine, but it seemed to me that the witness did not desire to go into his business, and that he did not desire to answer the question. and, I think, in fairness, the Court ought to instruct him as to what the law is.

The Court: The Court cannot punish him if he does not answer the question.

Judge-Advocate: Not because that is the law, but simply because an Attorney General has stated it to be the law. I shall never, so long as I appear in the service, concede that a Court Martial has not the same inherent power than any

Court under the Constitution of the United States has to enforce its mandates. A precept from this Court, when it subpoenas a witness, is as good as a precept from any Court in the land. That there is no penalty fixed by statute, is because there was no necessity for a penalty in the eyes of the legislators. They applied the remedy that was needed at the time for the administration of military justice. There was no way of bringing persons before a military court, and the statute was passed to give to the Judge-Advocate the right to issue process of attachment, to bring them before the Court to testify; that is the language of the law.
1335 Attorney General Garland held that, because there was no penalty attached, they could not be compelled to testify. Greenleaf, on evidence, held differently.

The Court: The Court understands that it has no power to inflict a penalty if he declines to answer.

Judge-Advocate: It is a fact that the Court has no power, under the statute, to inflict a penalty, but, as a question of law, I must protest, and have it put upon the record.

Mr. Blair: Then, I presume, going back to the original question, that the President will instruct this witness that he is not compellable to answer a question he does not desire to answer. That is in fairness to the witness, I submit.

The Court: (Addressing the witness) The Court will instruct you to the effect that, in case you do not answer the question, the Court has no power to punish you.

Q. (Judge-Advocate continuing examination) You decline to answer that?

A. Yes, sir; I don't think that I ought to answer that.

Q. You must be the judge; there is no penalty attached to your refusal.

Q. It appears from the testimony of Mr. Macauley, the Secretary of your Company, that he put in a bid for the contract of 1892; he was sick at that time, was he not?

A. Yes, sir; I think so.

Q. You had the matter under consideration, did you not?

A. Yes, sir.

Q. Were consulted with constantly as to how the bids should be made up?

A. Yes, sir; I went up to Mr. Macauley's house.

Q. You went up to Mr. Macauley's house?

A. Yes, sir.

Q. Do you remember making out the bid?

A. No; I do not remember making out the bid.

Q. You examined the specifications, I presume?
A. Yes, sir.
1336 Q. From time to time?
A. Yes, sir.
Q. And conferred with your people as to what you should bid, or what should be bid?
A. Yes, sir.
Q. I think I understand the reason why you didn't become a bidder as president of the Company,—why a personal bid was made, but you may state it?
A. The reason that a personal bid was made was on account of giving the security on the bonds, and I as President of the Company,—I had to go as one of the bondsmen, to furnish the bond.
Q. If Mr Macauley had been the successful bidder, you were in position to become his bondsman?
A. Yes, sir.
Q. And you would have become his bondsman if he had been the successful bidder?
A. Yes, sir.
Q. And, as a matter of fact, you did go on the bidder's bond; you were a guarantor on the bidder's bond?
A. Yes, sir.
Q. You were engaged in dredging mainly, were you not?
A. Yes, sir.
Q. Had you ever had a contract for jetty work?
A. No, sir.
Q. Had you ever familiarized yourself with jetty work?
A. Not a great deal; no, sir.
Q. Had you examined into the details of construction?
A. Yes, sir; I have seen a good deal of it.
Q. But I mean as to the cost of making and sinking fascines,—for instance, mattresses?
A. Yes, sir; I have seen a good deal of it.
Q. Have you seen the mattresses made?
A. Yes, sir.
Q. Have you seen the fascines of which they are con-
1337 structed made in the woods?
A. Putting the bundles together?
Q. Yes?
A. Yes, sir.
Q. Do you know how much it would cost you if you wanted to manufacture some of them?
A. No, sir; I did not go that far into it.

Q. Have you ever done pile work,—driving piles?
A. No, sir.
Q. These specifications call for fifty thousand tons, more or less, of stone, on which you bid $2.60 a ton, or on which Mr. Macauley bid; did you know where your Company would get the rock?
A. I guess there would not have been any trouble in getting the rock
Q. Where were you going to get it?
A. Could get it from Florida or from New York; there would have been no trouble in getting the rock.
Q. Had you made any arrangements as to where you could get that rock from if you had been the successful bidder?
A. No, sir.
Q. Did you get any rates of freight from any point?
A. No, sir; we didn't go that far into it; we thought it was time enough after we got the contract, if we got it.
Q. There is one other feature here. I see you offered to do the pile work. You don't seem to be so familiar with this as you were with dredging. If this contract had been awarded to Mr. Macauley, under this bid, how were you going to do the jetty work
A. Couldn't we do it as well as other people?
Q. You say you hadn't gone into the cost of it; you don't seem to be very familiar with it?
A. Would it not be time enough after we got the contract?
Q. Perhaps it might for you. It was a pretty large contract; three and a half million dollars,—a pretty large contract to take without having made any arrangements; risking
1338 a good deal, would it not be, to go into an unfamiliar business of that kind?
A. Yes, sir; but that would not hurt anything as long as there was money in it.
Q. How did you know that there was money in it if you had not made any calculation?
A. At the prices, we would have got some money out of it.
Q. How do you know?
A. I am satisfied about it; like I know anything else.
Q. How did you reach that price of $51.00 per cluster of fender piles?
A. I must acknowledge to you that Mr. Macauley has done the principal figuring on it, and I suppose he figured it out.

Q. Mr. Macauley testified that he did not do any figuring; that it was brought to him?

A. Which?

Q. This (exhibiting paper)?

A. That is not Mr. Macauley's handwriting. Mr. Macauley and I talked the matter over, and decided on the price, and it was filled out by the young man in our office. Mr. Macauley didn't fill it out, bu Mr. Macauley and I talked the matter over.

Q. But you cannot account, as President of the Company, for why you put in $51.00 per cluster of fender piles?

A. No, sir; I cannot. I didn't put that in, but I guess Mr. Macauley put it in.

Mr. Blair: On behalf of the accused, I ask that the Court meet at ten o'clock in the morning.

The President: If there are no objections, Court will stand adjourned until 10.00 o'clock a. m. tomorrow morning.

(Court adjourned at 3.00 o'clock p. m.)

THOMAS F. BARR
Col. & Asst. Judge Adv. Genl
Judge Advocate.

1339 United States Court Room,
Savannah, Ga.,
February 11th, 1898.

Court met pursuant to its adjournment of yesterday at ten o'clock a. m.

Present: All the members of the Court and the Judge-Advocate.

The accused, his Counsel, and the Reporter, W. O. Tarver, were also present.

The President: Court will come to order.

* * * * *

1340 JACOB PAULSEN, a witness for the prosecution, previously sworn, resumed the stand, and testified as follows:

Direct Examination by the Judge-Advocate.

Witness: If you please, before we start, I would like to correct a statement I made yesterday. I stated yesterday that John F. Gaynor was a stockholder in the Propeller Tow Boat Co., and I made a mistake. He is not, and has not been.

Q. In giving your testimony yesterday, you said that, in

the bid which was prepared and signed by Mr. McCauley, you proposed to use Florida stone, did you not? That the bid you made was to furnish Florida stone?

A. No, sir; you misunderstood me. I didn't say that. You asked me where we could have gotten the stone, and I say that that was one place that stone was gotten from,—Florida. We might have gotten it somewhere else.

Q. I ask you, when you made that bid, where did you propose to get the stone, if you or Mr. McCauley had been successful?

A. We didn't look for it.

Q. You had no idea where you would get it?

A. No, sir; it was time enough after we got the contract.

Q. How did you happen to think of Florida stone? It 1341 is not mentioned in the specifications, is it?

A. I don't know. I know that Florida stone had been used here before. I don't say that we were going to get Florida stone. I only say that we might have gotten it there; it is only a supposition.

Q. Wasn't it a matter of some importance to you, if your representative had secured the contract, to know what kind of stone you could use, and what price you would have to pay for it? Wasn't that an important matter calling for the expenditure of three and a half million dollars?

A. I guess Mr. McCauley and I talked the matter over at the time. It is a long time ago, and I don't remember the circumstances,—what was talked and done at that time.

Q. Have you often made bids for such an important contract as that?

A. No; not such a large one as that.

Q. It seems to me that that is a matter that might be readily remembered?

A. I don't know; it has been a long time ago.

Q. Mr. McCauley, in his testimony, said that you proposed to get your stone from New York; do you remember anything about that in the discussion of the bids?

A. We talked about stone from New York and stone from Columbia, and stone from different places, but didn't decide that.

Q. You didn't discuss what it would cost you to get it here?

A. I don't remember; I guess we knew somewhere near what we could get it for, or else we would not have put the bid in.

Q. Who got the dredging under that contract, do you remember?

A. P. Sanford Ross.

Q. I asked you yesterday a question which you declined to answer, which, in my judgment, was as proper a question as though I had asked a railroad president of one of our great trunk lines if there had not been a railroad pool for the distribution of business.

1342 A. If what?

Q. It is as proper a question as though I had asked the president of one of the great trunk line railroads if there had been a railroad pool for the proper distribution of business, and you declined to answer. Do you still decline to answer the question I asked you?

A. Yes, sir.

Q. Had you any idea when you put in that bid that you would have any part of the jetty contract?

A. That is a hard thing to say; you might be ever so positive of getting a contract and be left.

Q. Had you any agreement with any party that you would put in that bid? Did you inform any outside parties that that bid was to be made?

A. I cannot answer; I don't remember.

Q. Did you ever have any discussion with the Gaynors, or with any Atlantic Co. representatives in regard to putting in a bid for that work?

A. No, sir.

Q. Never did?

A. No, sir.

Q. And none of your representatives, that you are aware of?

A. Had nothing to do with the Gaynors.

Q. Did you know they were going to make a bid?

A. I suppose so; yes, sir.

Q. You became one of the guarantors on that bidder's bond, I think?

A. Let me see, if you please, the signature. I signed a good many bonds.

Q. I think you testified yesterday that that was why Mr. McCauley made a personal bid?

A. Yes; but I would like to see the signature.

Q. I will show it to you by and by. Had you been successful in securing that contract, was it your intention

1343 to do the jetty work yourself or sublet it?

A. I didn't go that far into it.

Q. You went to the extent of having bids put in in the handwriting of one of your clerks you think?

A. Yes, sir; but I could not swear that it was.

Q. You don't really know who filled out that paper?

A. No; I don't remember. I have honestly been trying to remember who did it, and I can't do it; that is honest; that is the truth.

Q. I don't doubt your word.

A. As true as anything I have ever told; but at the same time, I stand to the bids. They were not put there without my knowing they were put there.

Q. And you have a full understanding of the bids?

A. It was a long time ago, but I remember that the bids were put there all right, and I signed the bond.

Q. Here is a very large contract, on which a man unfamiliar with the business, even with great wealth, might risk the loss of his entire fortune. Now, I want to talk with you, as a business man, about the making of these bids. Had you studied any of the old contracts for improvements in these waters?

A. I hadn't studied them much, but I knew if we got the work at that price, we would be all right.

Q. How did you know that? Where had you received information of that kind?

A. Well, how do we know anything else. We run risks, and sometimes we make a big mistake.

Q. Yes, but this is a very important matter in which to make mistakes?

A. Yes, sir; a good many others in the same way.

Q. A very important matter; I see you are under bond there for three hundred and seventy-five thousand dollars, which is a pretty large sum, for a man to be willing to fill a contract of that magnitude at prices of things of which he does not appear to know a great deal. You were to drive 1344 piles for $1.55 per lineal foot for three piles, and then you wanted $51.00 for a cluster of three piles; now, can't you remember something about that very striking feature of the bid?

A. No; I don't remember the details now, but I stand by them bids.

Q. Don't you recognize now that $51.00 for a cluster of three piles is a good deal of money?

A. That is the reason I was on the safe side.

Q. But you would put in three at other places for $18.00; don't you remember that feature of your bid?

A. I don't remember now.

Q. That was a striking feature of it. It attracted my attention,—that you would put in three piles for about $18.00, but, if you put in three as a cluster, you were going to get $51.00 for them; can't you recall why you made a bid of that kind?

A. No; I don't remember the reason, but there was some reason. Don't a cluster have to have a chain around it, and single piling don't.

Q. About the mattress work; had you any knowledge of how the mattresses were to go in,—how they were to be used,—singly, or in tiers one after the other?

A. I had some idea, I suppose, at that time; I don't remember now.

Q. Did you get any information from any source whatever except from the specifications?

A. I didn't get information from Mr. Gaynor.

Q. I asked you from any source?

A. I don't want to answer that.

Q. You decline to answer that?

A. Yes, sir; in fact, I don't remember who I got the information from, but there is no doubt that, at that time, the thing was talked over, and I got the information from somebody.

Q. Did you know Mr. Connolly?

A. I did.

Q. Did you get any information from Mr. Connolly?

A. I don't think so.

Q. Are you sure that you didn't?

1345 A. I would not swear that I did or did not; I don't remember that I got any from him.

Q. You must have obtained some information somewhere. Mr. McCauley, the ostensible bidder, was sick in bed for several weeks, and somebody must have been acting for the interest of your Company?

A. I went up there when Mr. McCauley was sick, and we talked the matter over, and made the bid.

Q. But when you went there, you must have possessed some information which you conveyed to him, and which was a subject of discussion; where did you get that information?—from anywhere else than in the specifications?

A. I guess I got some, but I cannot remember where I got it

from, but I didn't get any from Mr. Connolly, if my memory serves me right.

Q. I find here two proposals. One is by P. Sanford Ross and one is by the Savannah Dredging Co., with your name as President, for dredging in Savannah River, Georgia. The bids were opened October 15, 1890. I find that the progress of time has made a change in the appearance of these proposals that perhaps might not have been evident years ago; I call your attention to the "eighteen" cents there; do you see that?

A. Yes, sir.

Q. You see the "Located at Savannah, Ga."?

A. Yes, sir.

Q. You see that the ink is entirely of a different character from that which appears in the other part of the proposal?

A. It looks like it.

Q. Is it not very marked?

A. That is a different ink.

Q. That is the proposal of P. Sanford Ross. Now, let us look at this one over here; how is that "Eighteen & one quarter cents per cubic yard,"—how does that ink compare in appearance with the ink of the rest?

1346 A. I am no expert, but it seems to look alike.

Q. I mean with this (indicating) not with that (indicating),—with the remainder of the writing in ink there; how does that compare with the rest of it? Is it the same?

A. It don't look like it; it is a paler ink.

Q. Paler ink; different kind of chemicals. Now, compare that "Eighteen and one quarter" cents in your bid with that "eighteen" cents there; how does the color of that ink compare?

A. It looks something similar, don't it?

Q. I ask you; I have my judgment. How closely do you think they resemble each other,—those two entries?

A. I ain't any expert on the ink business.

Q. That does not require an expert; I mean the resemblance?

A. Yes, sir.

Q. Now, that is signed by you. That "eighteen and one quarter cents per cubic yard" for the dredging is your bid, and "eighteen cents" is the bid of P. Sanford Ross?

A. Yes, sir.

Q. And the two bids are in different colored ink from the rest of the writing there; that is so, is it not?

A. It looks like it.

Q. And the difference between your bid and the bid of Mr. Ross is a quarter of a cent?

A. Yes, sir.

Q. Did you have any understanding with Mr. Ross in regard to that bid?

A. I could not answer that.

Q. You decline to answer it?

A. Yes, sir.

Q. Then you are not going to tell us all you know this morning?

A. No; I don't think I have the right to tell you my private business. Supposing Mr. Ross and I did have an understanding, I don't think you have the right to go into my private business.

1347 Q. That is public business; it was an expenditure of public money that was involved; the public interest of every tax-payer in the Country is involved in that question?

A. I decline to answer it.

Q. You decline to answer?

A. Yes, sir.

Q. Let the proposals answer for themselves. Did your boats do any dredging under that contract?

A. Yes, sir.

Q. You did have some of the dredging?

A. Yes, sir.

Q. Did you have any of the dredging under the contract bid for by Mr. McCauley,—the big contract?

A. Yes, sir; we had some of that.

Q. You had some of each?

A. Yes, sir.

Q. Were you the successful bidder for that dredging or did you have a sub-contract?

A. For which contract?

Q. For either 1890 or 1892?

A. No; Mr. Ross didn't have dredges enough to put on to do the work with, and, of course, we helped him out.

Q. You did get some, then, of the contract?

A. Yes, sir.

Q. And some of the big contract of 1892?

A. Yes, sir.

Q. Who was the successful bidder for both of those contracts?

A. Mr. Ross.

Q. Who was the guarantor on the bidder's bond of Mr. McCauley with you?

A. I think it was Col. Estill; you have it there, ain't you?

Q. I am asking for the information of the Court?

A. I think it was Col. Estill. I signed a good many
1348 bonds, but I think Col. Estill was on that bond with me.

Q. Who is Col. Estill?

A. He is the proprietor of the Morning News.

Q. Here in Savannah?

A. That is right; John H. Estill, I think it was.

Q. I would like very much to find out who filled in that bid?

A. I could not tell you to save my life. I have been trying to remember it, but I don't remember it.

Q. You thought yesterday that it was one of your clerks; which one did you think it was?

A. A young man by the name of Myers.

Q. Is he with you now?

A. No, sir.

Q. Do you know where he is?

A. No, I do not.

Q. He has left the City so far as you know?

A. No, sir; he is not in the City.

Q. Do you remember his initials?

A. No; I don't remember his initials; he belonged in Atlanta.

Q. Do you know any of his friends here, that you could get me his address in some way?

A. I might find out for you where he is.

Q. Will you kindly do so?

A. Yes, sir; I will.

Q. To the best of your recollection, that writing there is that of one of your clerks, but you are not sure; now, the handwriting below there (Referring to Exhibit 34, proposal of W. F. McCauley) is different; do you recognize that. Can you recall that?

A. No; I do not remember the writing. It is not Mr. McCauley's writing.

Q. No; there (indicating) is Mr. McCauley's writing?

A. Yes, sir.

Q. And those two are different. The bids are put in,
1349 —the prices,—in a peculiar hand-writing, and then the recital of the dredges and scows available appears in a different handwriting?

A. You know, as a general thing, they don't put the bids in until the last minute,—until just shortly before they are going to be opened.

Q. Did you put this in personally?

A. I don't remember, but it is very likely I did.

Q. You don't remember whether you were present at the opening of the bids in 1892?

A. I was.

Q. And very naturally, you put in the bid?

A. Very likely I carried it over myself.

Q. You say it is always usual to put in these prices just before putting in the bid?

A. Generally, yes, sir; most always.

Q. Then, were these prices in there when Mr. McCauley signed these bids in his sick chamber, or were they put in subsequently?

A. I don't remember.

Q. Don't remember whether you broke or followed out the general rule?

A. I guess Mr. McCauley could tell you.

Q. But he was sick in bed?

A. But I reckon he could tell you whether the bids were there before he signed them or not.

Q. Did you examine these specifications with a view to determine the kind of mattresses to be used?

A. I could not remember that.

Q. There are three designs mentioned in the specifications. One calls for a mattress of this description: "This mattress is a raft of round logs not less than twelve inches in average diameter, and not less than nine inches in diameter at the small end, placed in close contact side by side, and firmly
1350 held by transverse pole-binders spiked or bolted to them. The binders will be smaller logs or poles not less than five inches in diameter at the small end, and placed not more than eight feet apart, and those on the outside will be close to the ends of the logs. There will be placed upon the raft of logs a layer of live wood brush sufficient to give six inches in thickness to the finished work, secured in place by poles lashed to the binders of the raft." Did you ever see a mattress of that kind?

A. I don't remember.

Q. You were willing, then, to enter upon the construction of something you had never seen?

A. I guess I had seen it.

Q. Where had you seen a mattress like that?

A. I don't remember where, but I had seen a good many mattresses.

Q. But had you seen one that filled the requirements of that design?

A. I could not swear whether I had or not.

Q. Then you didn't know what it would cost to make a mattress of that kind,—of that design?

A. Not to a fine item.

Q. Then there was a second design to be considered, as follows: "This mattress will consist of a layer of closely-placed fascines crossed at right-angles by a second layer of like fascines placed at intervals of six feet. The brush must be carefully laid so as to break joints and to make a continuous fascine extending completely across the mattress. The fascines must be firmly held between binding poles made of live saplings of pine or other timber of a kind approved by the Engineer Officer in charge. These must be straight and of slight taper, and must not be more than five inches in diameter at the butts, nor less than two inches in diameter at the tips." Did you ever see a mattress that answered that description?

A. I don't remember.

Q. That is not a full description of it, but enough to give you my meaning. "Third Design.—This mattress will
1351 consist of a bottom grillage of poles of live saplings of pine or other timber of a kind approved by the Engineer Officer in charge. The poles must be straight, of slight taper, of an average diameter of four to five inches, and not less than three inches at the small end, and must be placed from four to eight feet apart between centres, both longitudinally and transversely, and spliced together with long scarf joints in a manner satisfactory to the Engineer Officer in charge. Upon this grillage will be placed a layer of closely compacted fascines surmounted by a top grillage similar in design to the one at the bottom. The poles of each grillage will be securely fastened together by suitable wire or rope lashings, and the upper and lower grillages will also be securely fastened together in such manner as the Engineer Officer in charge may approve." Did you ever see a mattress like that?

A. I guess I have, but I could not swear to it.

Q. Where did you see it?

A. I have seen a good many mattresses; I have seen lots of them, but I could not swear that they are of that dimensions, what I have seen.

Q. Which of those designs would have been the most expensive to construct had you gotten that contract? Which would have cost you the most money to make?

A. I could not remember.

Q. Did you know at the time?

A. I guess I had some idea about it.

Q. Is it your judgment that they could be made for the same price?

A. I suppose so.

Q. You think they could be made for the same price. The first design and the second design would not cost any more to construct and put in place than the third design described?

A. I don't know.

Q. And you didn't know when Mr. McCauley made this bid?

A. I guess we knew something about it at that time.

1352 Q. Did you have any information as to what kind of a mattress would be called for?

A. I don't remember.

Q. You said in regard to the stone that it was time enough, in your judgment, to arrange for procuring it, after the contract had been secured; how about the logs and the iron and the other material required? Had you made any investigation as to what it would cost you to procure those?

A. I don't remember, but we would have just as much time to get that as to get the rock, and there would not have been any trouble about the rock.

Q. Did you make any arrangements,—not what you might have done had you secured the contract,—but did you make any arrangements before putting in your bid?

A. No, sir.

Q. You didn't know where you would get the iron from?

A. No.

Q. And you didn't know where you would get the logs from?

A. No.

Q. And you didn't know where you would get the stone from?

A. No.

Q. Nor the brush necessary, or any of the other material mentioned in the proposals,—that is true, isn't it?

A. Yes, sir.

Q. The dredging part of the contract you were prepared to carry out? You knew what that would cost you?

A. Yes, sir.

Q. What dredges were you going to use in that contract, do you remember?

A. I don't remember, but I guess it is on the specifications.

Cross-Examination by Mr. Charlton.

Q. Just one or two questions. The Judge-Advocate asked you whether you had made any arrangements about your 1353 bid,—about the stuff you were to acquire; is there any difficulty in getting iron, logs, brush and stone around here?

A. No, sir.

Q. In spite of going on all of these bonds, you head is still above water, I believe?

A. Yes, sir; I hope so.

Q. You are reasonably solvent?

A. Yes, I hope so.

Q. When you went upon that bond, were you perfectly able to go upon it?

A. Yes, sir.

Q. Do you happen to know whether Col. Estill is one of the wealthiest men in Savannah?

A. Yes, sir.

Q. You know that is a fact?

A. Yes, sir.

Q. You stated yesterday that Capt. Carter was a stockholder in the Propeller Tow Boat Co., that he had 150 shares?

A. Yes, sir.

Q. Do you remember whether he bought all of those shares, or whether the Company issued some to him as a dividend from time to time,—issued to him and all of the stockholders as a dividend?

A. Yes, sir.

Q. It was a prosperous company?

A. Yes, sir.

Q. A great many responsible business people in Savannah were stockholders in it?

A. Yes, sir.

Q. And being prosperous, gave a dividend of stock to the stockholders?

A. Yes, sir.

Q. The Savannah Dredging Co. is a different organization?

A. Yes, sir.

Q. Does Capt. Carter own any stock in that?
1354 A. No, sir.
Q. And never has?
A. No, sir.
Q. The Capital stock of the Tow Boat Co. is what,—do you remember?
A. Three hundred thousand dollars.
A. That makes three thousand shares?
A. Yes, sir.
Q. And out of that, Capt. Carter happens to own at present 150 shares?
A. Yes, sir.
Q. I don't suppose the fact that a man owns stock in the same company that you do entitles him to a portion of the profit in other companies you own stock in? If it does, I would like to find that out, as I believe I have some in some companies with you.
A. No, sir; two companies; don't have any relationship.
Q. Nothing at all?
A. No, sir.
Q. At the time you put in this bid, did you or your partners, or anybody in your company, have any general information or knowledge in regard to the character of work to be done, and what it was apt to cost you?
A. Yes, sir; of course, we talked the matter over.
Q. It was a business venture?
A. It was a business venture, but I don't remember the circumstances.
Q. It has been six years now?
A. Yes, sir.
Q. It was constructed in 1892?
A. Yes, sir; that is right.
Q. And it was a business venture made by your concern, or by you and Mr. McCauley?
A. Certainly; a business venture.
1355 Q. And out of which you expected to make a profit, and it was honestly put in?
A. Yes, sir; why should we have gone to the trouble of getting Col. Estill to go on the bond if it was not to go in?
Q. But your bid was put in, as you say, being an honest business venture, out of which you expected to make a profit. Were the Gaynors or anybody shown your bid, or did they have anything to do with it?
A. They didn't have anything to do with it.

Re-direct Examination by the Judge-Advocate.

Q. So far as you know, the party who filled in those proposals, whose name you cannot remember, might have informed Gaynor of the amounts they inserted there?

A. I could not swear to that.

Q. So far as you know, that is true?

A. Yes, sir; that is true.

Judge-Advocate: That is quite evident from the proposals themselves.

Mr. Rose: The Judge-Advocate ought to go on the stand himself if he is going to testify; or will you sum up the case now or wait until we get through?

Judge-Advocate: Perhaps I might do so if I followed the example of Counsel.

Q. (Continuing examination) When was your last stock dividend?

A. In the Tow Boat Co.?

Q. Yes.

A. The last stock dividend was in December.

Q. Of this last year?

A. Yes, sir.

Q. How many shares to a hundred shares of stock?

A. How is that?

Q. How large was the dividend? How much was the
1356 distribution of stock? How many shares did you give to the share-holders for each one hundred shares that they held?

A. When?

Q. The last dividend?

A. We didn't pay any dividend.

Q. I mean the distribution of stock?

A. That was not done lately.

Q. When was that done?

A. Done I suppose in 1889 or 1890; somewhere along there. I thought you asked me about the dividend.

Q. Then, how many stock dividends have been made by the Tow Boat Co. since 1884?

A. I think one.

Q. How many shares were distributed for each one hundred shares held by the stockholders?

A. One hundred.

Q. Just double?

A. Double.

Q. A handsome dividend?
A. Yes, sir.
Q. Then Capt. Carter didn't purchase one hundred and fifty shares in 1884 or 1885?
A. No, sir.
Q. He only purchased seventy-five?
A. No; he didn't purchase that, I don't think. If my memory serves me right, I don't think he bought the whole thing at one time.
Q. When did he buy it?
A. Capt. Carter became an owner in the Tow Boat Co., I guess, in 1888 or 1889.
Q. That was his first ownership in it, was it?
A. Yes, sir.
Q. Then yesterday, when you testified that he became an owner in it soon after his arrival here, that was a little inaccurate?
1357 A. I don't remember when he came here, nor am I positive about the years, but it seems to me it was about the time,—it might have been in 1890.
Q. It might have been in 1890?
A. Yes, sir.
Q. Will you look on your books, and let me know just when he became the proprietor of that stock?
A. Do you think that it is right for the president of a Company to give his stockholders away?
Mr. Blair: Capt. Carter has no objection.
Witness: It is generally the rule in banks and other institutions that we don't give our stockholders away
Judge-Advocate: Not in a criminal Court.
Witness: I don't want you to get me to give anything away that I have no right to.
Judge-Advocate: You have a right to tell that in a criminal Court, and this is a criminal Court.
Mr. Blair: Capt. Carter, the accused, gives you permission to tell all you know about his ownership in the Tow Boat Co.
The Court: The Court would like to make a remark. The witness has presented himself as a witness, and taken an oath to tell everything he knows in regard to the matter. The Court thinks he is morally bound to answer all questions which do not tend to incriminate himself, or that will not make him responsible for trial and punishment by a Court of justice, and, in refusing to answer these questions, the

Court considers that he is guilty of contempt of Court, but we are so placed by a ruling of the Secretary of War that we cannot, at the present time, mete out the proper punishment for that contempt.

Q. (Judge-Advocate continuing) Will you furnish that information?

A. Yes, sir; with pleasure, as long as Capt. Carter does not object.

Q. Since Capt. Carter does not object, you will furnish it?

A. Yes, sir; as near as I can remember. The first
1358 stock Capt. Carter bought was only five shares.

Q. Do you remember when that was?

A. It was in 1889 or 1890.

Q. Then I have asked you to go to your books and give us that information?

A. All right.

Q. If you will do that, I will be obliged to you?

A. I will do that.

Q. If you will get that information, and come back in the course of three-quarters of an hour or an hour, I will be much obliged to you.

A. All right, sir.

Witness excused, to get the information requested.

Judge-Advocate: Will the Court take a recess for a short time, please.

(At 10.55 a. m., Court took a recess until 11.30 a. m.)

The Court met pursuant to recess at 11.30 A. M.

Present:

All the members of the Court and the Judge-Advocate. The accused, his counsel and the Reporter, W. O. Tarver, were also present.

* * * * *

1365 Judge-Advocate: The proposals of P. Sanford Ross and The Savannah Dredging Co. for Dredging in Savannah River, Ga., opened Oct. 15, 1890, which were shown to Mr. Paulsen when he was on the stand, had not before been shown to the Court, and copies of them will be attached to the record marked Exhibits 262 and 263.

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* * * * *

1377 JACOB PAULSEN, a witness for the prosecution, previously sworn, resumed the stand, and testified as follows:

Direct Examination by the Judge-Advocate.

Q. You have procured the information I desired, I understand?

A. Yes, sir. Capt. Carter bought the first five shares of stock on July 1st, 1890. He then, shortly afterwards, got five shares dividend. April 21, 1891, Capt. Carter bought one share from the Company.

Q. For how much?

A. At par. June 16, 1891, he bought four shares. January, 1892, he bought ten shares, and May 13, 1892, fifteen shares.

Q. Do you know what the shares were then rated at?

A. No, sir; I don't know what he paid for them.

Q. Dividends were being paid on them at that time; your Company was prosperous?

A. Yes, sir; the Company was earning dividends. They were paying dividends, and they were also accumulating a surplus fund, to build new iron boats. On October 22, 1892, Capt. Carter was credited with $1,875.00.

Q. From the surplus was that?

A. No, sir; it was an extra issue of stock; and on Nov. 15th, along with the $1875.00,—which was credited to Capt. Carter,—paid $625.00 and got twenty-five shares of stock. Then in February, 1893, Capt. Carter bought twenty five shares of stock.

Q. What date in February?

A. Feb'y 20, 1893. March 10, 1894, he bought twenty shares, and May 27, 1895, thirty shares. That makes the 150 shares.

Q. In giving your testimony yesterday, you were mistaken in saying that Capt. Carter took some stock soon after he came here?

A. I said shortly after he came here; you misunderstood me.

Q. But, as a matter of fact, he never took any until 1890?

A. Yes, sir.

1378 *Re-cross Examination by Mr. Charlton.*

Q. I notice that $1,875.00 was put to his credit; that was in the nature of a money dividend to be taken out in stock?
A. Yes, sir.
Q. It was put to the credit of every other stockholder in the same proportion?
A. Yes, sir.
Q. Will you state whether in 1890, when Capt. Carter bought his first five shares, the Tow Boat Co. had any contract with the United States Government in this District?
A. No; never did.
Q. Has it ever had any since that time?
A. Never. Never before and never since. Never had any contract; they don't do that kind of business.

Re-direct Examination by the Judge-Advocate.

Q. Do you ever do any towing for the Savannah Dredging Co.?
A. They have done it; yes, sir.
Q. Ever do any for Mr. Ross?
A. Yes, sir.
Q. You have done towing for those two?
A. Yes, sir; and for more, too. We hire the boats to do the towing.
Q. Then you did do towing for Ross and the Savannah Dredging Co.?
A. Yes, sir; and for Mr. Moore too.

Re-cross Examination by Mr. Charlton.

Q. You did towing for anybody that paid for it?
A. Yes, sir; for anybody that paid for it.
Q. It was a corporation for that business, to do towing?
A. Yes, sir.

Re-direct Examination by the Judge-Advocate.

Q. Did you do any for the Atlantic Contracting Co.?
A. We have towed for them, too. We have ten boats, you know.
1379 Q. It has been a very prosperous company?
A. We have boats to hire.
Witness excused.

Judge-Advocate: I read now, and ask to have it put on the record as evidence, from the Annual Report of Lieut. Carter, being Appendix O of the Annual Report of the Chief of Engineers for 1890, an extract from page 1261:

"In view of the foregoing the following plan of improvement is submitted:" (among the items of the project)

"A training-wall from the lower end of Marsh Island to Kinzey's Point and the widening of the unduly contracted region below Kinzey's Point," calling the attention of the Court to the fact that that is the Hutchinson Island improvement.

I also read from the specifications of the contract of 1892, which are already in evidence, the "Amount and Character of Dredging", paragraph 42.—"The following is an outline of the work required:

"Such parts of the pile and timber wharfing and revetment and such parts of the ship railways on Hutchinson's Island as project beyond the bulkhead line established in 1889 will be removed by the contractor and so disposed of by him as not to injure vessels or obstruct navigation. When this timber and other material has been removed, the shore of Hutchinson's Island will be excavated by dredging to a depth of 26 feet at mean high water and back to the established bulkhead line, and the contractor will then build on that line pile and timber wharfing or revetment which, in the opinion of the Engineer officer in charge, is equally as extensive, good, and desirable in every respect as that removed. The contractor will also alter or repair the ship railways, putting them, in the opinion of the Engineer Officer in charge, in equally as good and desirable a condition as they were at the time of their partial removal. The wharfing or re-
1380 vetment, with this foundation and backing of logs, stone, etc., is to be removed and disposed of by the contractor at a fixed price per lineal foot, measured along the line of the work, this price to include the replacing or rebuilding of the wharfing or revetment, and the alteration of the ship railways hereinbefore mentioned."

This is from the specifications of the big contract of 1892, dated Aug. 17, and the bids were opened September 17, 1892, in which P. Sanford Ross had the contract for dredging.

I read now from page 1457, Appendix M, Report of the Chief of Engineers for 1895,—report of Capt. Carter:

"Since the existing project for improving Savannah Har-

bor was adopted, the following appropriations have been made for this work:

"By act of Congress of—

"August 11, 1888, (unexpended balance)	$ 4,035.05
"September 19, 1890	350,000.00
"July 13, 1892,	318,750.00
"March 3, 1893,	1,000,000.00
"August 18, 1894,	975,000.00
"March 2, 1895,	856,250.00
Total	$3,504,035.05.

"The entire amount estimated in my report of June 30, 1890, has now been appropriated, and it is expected that this will be sufficient to complete the improvement according to the project submitted in the same report. For the following reasons, however, it cannot be expected that the improvement will be permanent throughout the entire length of the river."

I read from the Report of the Chief of Engineers for 1896, Appendix M, report of Capt. Carter, page 1222, this extract:

"The entire amount estimated in my report of June 30, 1890, as necessary for the completion of the present project of improvement has now been expended, the works of contraction have been completed, and the object of the improvement—

1381 that is, the establishment of a navigable channel 26 feet deep af mean high water from the City to the ocean bar—has been attained."

JOHN W. O. STERLY, a witness for the prosecution, previously sworn, recalled, testified as follows:

Direct Examination by the Judge-Advocate.

Q. (Handing witness paper) Do you identify that letter?

A. Yes, sir.

Q. What is it?

A. It is a letter from the Acting Chief of Engineers to Capt. Carter relating to the Parrott Estate and the modification of the harbor line.

Judge-Advocate: I offer in evidence, and read:

"Office of the Chief of Engineers,
United States Army.
Washington, D. C., November 16, 1896.

"Capt. O. M. Carter,
"Corps of Engineers,
"Savannah, Ga.

"Captain:

"Referring to recent correspondence relative to the Parrott estate and the modification of harbor lines at Savannah, Ga., I have to inform you that Col. Hains will stop at Savannah on his way to or from Tortugas for the purpose of investigating the matter and making report thereon. You will furnish him with any information or other assistance that he may require.

"Very respectfully,
"Your obedient servant,
"A. MacKenzie,
"*Acting Chief of Engineers.*"

Endorsed: "U. S. Engineer Office, Savannah, Ga. Received Nov. 13, 1896". This was subsequent, as the Court will remember, to the endorsement of the accused, which bore date of Oct. 21, 1896.

1382 Mr. Rose: And prior to Col. Hains' letter.

Judge-Advocate: Prior to Col. Hains' letter, in which Col. Hains repeated, as the Court will remember, the statements in Capt. Carter's letter.

Mr. Rose: In which Col. Hains said: "I therefore recommend. It is my own conclusion and recommendation."

Judge-Advocate: He concluded in the language of the accused.

Mr. Rose: I don't remember the language he used.

Q. (Handing witness paper) What is this?

A. A note written by Col. Hains in the Savannah Office to Capt. Carter, when he was here in Savannah.

Judge-Advocate: I offer in evidence and read:

"Nov. 27

"My Dear Captain:

"Sorry not to see you. Am two days late now or I would stop over till tomorrow.

"In regard to the Hutchinson Isl. matter, I would like to ask you whether or not other claimants than the Parrott heirs are now likely to make trouble, or is the trouble with them alone? If only with them, cannot some plan of agreement be

arranged? I understand of course that an appropriation will have to be available for it.

"The Department is anxious to settle the case in some equitable way.

"Yours truly,

P. C. HAINS."

"Capt. O. M. Carter,

U. S. Engrs."

Stamped on the back is: "U. S. Engineer Office, Savannah, Ga., Received Nov. 28, 1896", and then marked: "Savannah, Ga., November 27, 1896", indicating probably the return of the accused.

Q. (Handing witness paper) What is that?

1383 A. Copy of letter to Col. Hains in regard to the Harbor Line, Kinzey's Point, and Savannah Harbor Lines, from Capt. Carter. It is enclosure to S. H. 89, 1896.

Q. That had gone to the War Department?

A. Yes, sir.

Judge-Advocate: I offer in evidence and read:

"Subject: Harbor Line, Kinzey's Point, and Savannah Harbor Lines.

"United States Engineer Office,

"Savannah, Ga., November 28, 1896.

"Colonel Peter C. Hains,

"Corps of Engrs., U. S. Army,

"Division Engineer, Southeast Division,

"9 Pleasant Street, Baltimore, Md.

"Colonel:—

"Replying to your inquiry of the 27th instant, I have to state that so far as I have heard no claimants other than the Parrot heirs are causing any trouble in regard to the Savannah Harbor lines There is no reason whatever why the Parrott estate cannot be settled on the present basis, since the City of Savannah agrees to give to all holders of property on Hutchinson's Island an equal amount of land in the rear of their present holdings. If it is desired to erect any buildings on the land, this can be done, placing such buildings not farther forward than the approved harbor line. The removal of the land in front at any time by the United States could only improve the value of the property. Since action by the United States can no longer injure, but rather improve the value of the holdings of the people on Hutchinson's Island, I see no reason why they should claim damages. As I have stated in my reports, it is impracticable at present to cut

off the projecting points of land, since the property owners on Hutchinson's Island, while interposing no objection to the present state of affairs, do object to the proposed changes, claiming excessive damages for the loss of the water
1384 front during the time the work of excavation and replacing of the wharves would necessarily continue.

"It is not practicable, without injury to the harbor, to get the enlarged cross-section by deepening instead of widening the river, and relinquishment of the adopted harbor line will work serious injury to the harbor. Since, as I have before stated, the present condition of affairs does not work any injury to any one and does not in any way interfere with the settlement of any estate, I am still of opinion that the existing harbor line should not be modified.

"If the property owners themselves could secure an appropriation sufficient to pay their claims, which I think excessive, the work of altering the shore in that vicinity could be done immediately.

"Very respectfully yours,

"Your obedient servant,

"O. M. CARTER,

"*Capt. Corps of Engrs. U. S. A.*"

Q. (Handing witness paper) What is that?

A. That is a letter from Capt. Carter to the Chief of Engineers in regard to cutting off Hutchinson's Island, Savannah, Harbor, Ga., with endorsement from the Chief of Engineers.

Judge-Advocate: I offer in evidence and read:

"Subject: Cutting off Hutchinson's Island, Savannah Harbor, Ga.

"United States Engineer Office,

"Savannah, Ga., January 23, 1897

"Brig. Gen. Wm. P. Craighill,

"Chief of Engineers, U. S. Army,

"Washington, D. C.

"General:

"Complying with oral instructions received from you, I have the honor to state that I am of opinion that the
1385 cheapest way to settle the question of land projecting beyond the established bulkhead line on Hutchinson's Island, Savannah Harbor, is to dredge away said land. All of the owners of the property, with the exception of Mr. Willink, are willing to claim no damages from the United States, being contented simply that the present structures be moved to the rear of the existing wharf front or replaced

by others equally as good, the City of Savannah agreeing to give the wharf owners land in rear of their present holdings equal to that taken by the United States. Mr. Willink, whose property consists of a ship railway, desires rental for the time lost by him during the execution of the work. I am of opinion that $300 per month will be ample rental and that the time required will not exceed four months. I am of opinion that the entire amount of land projecting beyond the bulkhead line can be removed, the present structures replaced and the rental of the railway paid for the sum of $125,000.

"In this connection, and for details, I respectfully refer to my report of May 26, 1891.

"Very respectfully,
"Your obedient servant,
"O. M. CARTER,
"*Capt., Corps of Engrs. U. S. A.*"

"(Enclosures consisting of papers left by Gen. L. Craighill,—4 papers.)"

"1st indorsement?
Office Chief of Engineers,
U. S. Army,
"Feb'y 15, 1897.

"Respectfully returned to Capt. Carter. It does not appear that the removal of a part of Hutchinson's Island forms a part of the existing project for completing improvement of Savannah Harbor. The appropriation and legislation of the river and harbor act of July 13, 1892, provided for com-
1386 pletion of existing project of improvement, at a certain limit of cost; work in accordance with such limit was carried out and reports indicate the project was completed.

"The work provided for by river and harbor act of June 3, 1895, does not, it is understood, include work of dredging a portion of Hutchinson's Island or such an expenditure as is contemplated herein.

"It therefore appears that if the widening of the river in the vicinity of Hutchinson's Island is to be carried out a new estimate must be submitted and a special appropriation for the work made. The presenting of such a report and estimate unless called for by concurrent resolution is prohibited by law.

"Further than this it is the opinion of the Chief of Engineers that while the United States might undertake to carry out the dredging required for widening the channel, it should

not be called upon to pay for land or private rights to be damaged by the proposed improvement of this harbor.

"As the proposed widening of the harbor by removing a portion of Hutchinson's Island does not now form a part of existing project; as any adoption of such a work through the legislation of Congress cannot be brought about for some time to come, and as the present condition is working injustice to private interests, it is the intention of the Chief of Engineers in the near future to recommend to the Scretary of War, such a modification of the harbor lines in Savannah Harbor as will, without permitting any future encroachment on the existing water way, permit those having riparian rights to exercise such rights fully.

"By command of Brig. Gen. Wilson.

"A. MacKenzie,
"Lieut. Col. Corps of Engineers."

And indorsement not signed is the second indorsement, which I will not read.

The Court will doubtless have observed, as I have read
1387 these papers yesterday and today, that the report of Col. Hains to Gen'l Craighill, made Dec. 1st, 1896, calls attention to the fact that he was in Savannah on the 27th of November, but that Capt. Carter had gone to Jacksonville, and he didn't see him, but that he examined the records of the case and inspected the Island itself from a commanding position on the Savannah side of the River.

I call attention of the Court to Specification 8 of the third charge, "Conduct unbecoming an Officer and a gentleman," page 14.

Q. (Handing witness paper) What is that book?

A. Savannah Harbor Book No. 4.

Q. What is that letter I show you on page 45.

A. Letter from Capt. Carter in regard to the quarantine station, Savannah Harbor.

Judge-Advocate: I offer in evidence and read:

"Subject: Quarantine Station, Savannah Harbor.

"United States Engineer Office,
"Savannah, Ga., Feb'y 25, 1896.

"Brig. Gen. Wm. P. Craighill,
"Chief of Engineers, U. S. Army,
"Washington, D. C.

"General:

"On April 26, 1894, the Secretary of War granted to the

City of Savannah permission to build, outside the established harbor line at the new quarantine station near Savannah, certain temporary structures, provided

That the City of Savannah shall remove immediately, at its own expense, upon demand by the War Department, all structures erected or material deposited, by or under the authority of the said City, beyond the harbor line established January 19, 1893.

"There have been built by the City of Savannah beyond the established harbor line, wharves, tramways, engine sheds. fumigating house, etc. Considerable ballast has also 1388 been deposited beyond the harbor line.

The improvement of the harbor has now reached a point where it is necessary to open at once A-B-C shown on the blue print herewith. The point of land at the quarantine station projecting beyond the established harbor line should be cut away, and I have the honor to request that, in compliance with the terms of the permission granted by the War Department on April 26, 1894, the city of Savannah may be required to remove at once all structures built or material deposited beyond the established harbor line.

"Very respectfully,
"Your obedient servant,
"O. M. CARTER,
"*Capt., Corps of Engrs., U. S. A.*

(one enclosure)"

Q. (Handing witness paper) What is this?

A. This is a map or tracing of Oyster Bed Shoal, Savannah Harbor, Ga., 1896.

Judge-Advocate: This is identified by (Reading) "U. S. Engineer Office, Savannah, Ga., Feb. 25, 1896. Transmitted with my letter of this date. O. M. Carter, Capt., Corps of Engrs., U. S. A." It is the original from which the blue print was taken, and it is submitted in evidence. The blue print will be attached to the record marked Exhibit No. 264.

Q. (Handing witness paper) What is that?

A. Letter from the Chief of Engineers forwarding copy of letter to the Mayor of Savannah from the Secretary of War, directing the City to remove material deposited by its agents beyond established harbor line, at quarantine. "1st Indorsement. Office of Chief of Engineers, U. S. Army, March 12, 1896. Copy respectfully furnished Capt. Carter, Corps of Engineers, for his information. By command of Brig. Gen.

Craighill: A. MacKenzie, Lieut. Col. Corps of Engineers."

1389 Judge-Advocate: I offer in evidence and read:

"War Department,

"The Mayor, Washington, D. C., March 9, 1896.
of the City of Savannah, Ga.

"Sir:

"Under authority of section 3 of the river and harbor act, approved July 13, 1892, the Secretary of War under date of April 26, 1894, gave the City of Savannah, Ga., permission to build outside the established harbor line in the Savannah river at the new quarantine Station near Savannah, Ga., such temporary structures as might be necessary in connection with said Quarantine Station, upon the following consition, inter alia:—

'That the City of Savannah shall remove immediately, at its own expense, upon demand by the War Department, all structures erected or material deposited, by or under the authority of the said City, beyond the harbor line established, January 19, 1893.'

"It is understood that under authority of said permission, the city of Savannah has built beyond the established harbor line wharves, tramways, engine sheds, fumigating house, etc., and has deposited ballast beyond the harbor line.

"The work of improving Savannah Harbor has reached a point where the removal of the structures built and the deposits made by the City beyond the harbor line is necessary in its further prosecution.

"I have the honor, therefore, to request that the City of Savannah remove at once all structures erected and all material deposited by or under its authority beyond the harbor line established, January 19, 1893.

"Very respectfully,

"DANIEL S. LAMONT,

"*Secretary of War.*

1390 "1st indorsement

"Office of Chief of Engineers,
Y. S. Army,

March 12, 1896.

"Copy respectfully furnished Capt. O. M. Carter, Corps of Engineers, for his information.

"By command of Brig. Gen. Craighill.

"A. MACKENZIE,

"*Lt. Col., Corps of Engrs.*"

Judge-Advocate: I offer in evidence and read:

"City of Savannah,
"Mayor's Office,
"March 14, 1896.

"Hon. Daniel S. Lamont,
"Secretary of War,
"Washington, D. C.

"Sir:

"I have the honor to acknowledge receipt of your communication of the 9th inst. relative to the removal of tramways, engine sheds, fumigating house, etc., at the quarantine station of the City of Savannah, and beg to state that the matter will receive prompt attention at the next regular meeting of the City Council.

"Yours respectfully,
"HERMAN MYERS,
"*Mayor.*

"1st indorsement,
"Office of Chief of Engineers,
U. S. Army, March 18, 1896.

"Copy respectfully furnished Capt. O. M. Carter, Capt., Corps of Engineers, for his information.

"By command of Brig. Gen. Craighill.

"A. MACKENZIE,
"*Lt. Col. Corps of Engrs.*

1391 Judge-Advocate: I also offer in evidence and read:

"City of Savannah,
"Mayor's Office,
"March 21, 1896.

"Hon. Daniel S. Lamont,
"Secretary of War,
"Washington, D. C.

"Sir:

"Replying further to your communication of the 9th inst., relative to the removal of structures erected beyond the harbor line established January 19, 1893, I beg to say that the communication and other letters and data connected with the subject matter have been referred to the Council of the City of Savannah, which had the benefit of a conference with Capt. Carter.

"In compliance with the request of Counsil, I beg to call your attention to the fact that the only structures erected beyond the harbor line, since its establishment have been a fumigating building and a small building erected for sailors' quarters. We, therefore, understand that it would be the duty of the City of Savannah to remove, at its expense, those two

buildings, and also so much of the ballast deposited beyond the harbor line since its establishment; but we beg to call your attention to the fact that the most expensive and valuable improvements, namely, the wharves and tramways now beyond the harbor line, were erected and completed some years before the establishment of the harbor line. Their erection began in 1888 and was completed the early part of 1890. They were built at a heavy expense to the City of Savannah. Their removal would necessitate the removal of the quarantine officer's quarters, which is now within the harbor line, and practically the establishment of another station. We understand that the Government could not expect the City of Savannah to remove these wharves and tramways and establish another station at the City's expense, and that the Government could do so
1392 only under its powers of eminent domain, and by proceedings looking to compensation to the City of Savannah.

"I need not say that the City desires always to co-operate with the Government authorities in the establishment and maintenance of its harbor line, but at the same time, the City of Savannah would be bound, in justice to its citizens and taxpayers, to protect them in the matter of expense incident to the destruction of its station, and the removal of buildings erected before the establishment of the harbor line. It is also proper to add that we were compelled to establish our present station in 1888 on account of the government work and the shoaling of the waters in front of our former station, and this entailed upon the city a large expense.

"Very truly and respectfully yours,
(Signed) HERMAN MYERS,
Mayor."

"1st indorsement by brief from the Secretary of War to the Chief of Engineers.

2nd indorsement. Office of Chief of Engineers, U. S. Army.
"March 25, 1896.

"Respectfully referred to Capt. O. M. Carter, Corps of Engrs., for remarks. To be returned.

(Signed) A. MACKENSIE,
"Acting Chief of Engineers."

"3rd indorsement. United States Engineer Office,
Savannah, Ga., March 27, 1896.

"Respectfuly returned to the Chief of Engineers, U. S. A., Washington, D. C.

"In 1885, when dam No. 31 was built, the quarantine station

of the City of Savannah was situated on the Oyster Bed, nearly opposite Fort Pulaski. After the construction of that Dam, the anchorage north of the Oyster Bed began to shoal, and in 1888 three small wharves were built on Long Island to facilitate the discharge of ballast.

1393 "In February, 1889, I informed the City authorities that those wharves were too near the navigable channel, and that the continued occupancy of Long Island might be endangered by the impending establishment or harbor lines in that vicinity.

"The City of Savannah therefore applied for permission to establish its quarantine station on Cockspur Island. That permission was granted, and the conditions of the occupancy prescribed by the Secretary of War were accepted by the City on May 2, 1889. Nothing was done, however, on Cockspur Island, but in 1890, quarters for the quarantine officer, and two wharves for the discharge of ballast were built at the lower end of Long Island.

"The unlawful deposition of ballast at the new quarantine station threatening the stability of the navigable channel, after some correspondence, I suggested to the Mayor of Savannah on Oct. 16, 1892, that he request an official establishment of the harbor lines at that locality. The line was officially established January 13, 1893, and a tracing showing that line was sent to the Mayor of Savannah February 6, 1893. Since that date a fumigating building, a small building for sailors quarters, engine sheds, tramways, etc., have been built outside of the established bulkhead line, and an enormous quantity of ballast unlawfully deposited there. Those violations of Section 7 of the River and Harbor Act of 1890 were repeatedly reported to the U. S. District Attorney, as required by law, but, so far as know, no action was taken by him in the premises.

"The necessity for removing the projecting point of land at the new quarantine station was given in my letter to the Chief of Engineers dated Feb'y 25, 1896.

O. M. CARTER,
Capt., Corps of Enrs., U. S. A."

(1 Blue print herewith."

If there is a blue print that can be introduced further, I will obtain it if it is in the office.

1394 I offer in evidence and read:

"War Department,
"Washington, D. C., April 4, 1896.

"Sir:

"Referring to previous correspondence on the subject and replying to your letter of the 21st ultimo, with statement as to the structures and other obstructions that extend beyond the harbor line established January 19th, 1893, for which the City of Savannah admits responsibility, and is willing to undertake the removal of, I beg to say that the Department must require a literal compliance by the City of Savannah with the request contained in my letter of 9th ultimo, to-wit:

"That the City of Savannah remove at once all structures erected and all material deposited by or under its authority beyond the harbor line established January 19, 1893.'

"Very respectfully,
"DANIEL S. LAMONT,
"Secretary of War."

"Hon. Herman Myers,
"Mayor of Savannah,
"Savannah, Ga."

"1st indorsement
"Office Chief of Engineers,
U. S. Army, April 7, 1896.

"Copy respectfully furnished Capt. O. M. Carter, Corps of Engineers, for his information.

"By command of Brig. Gen. Craighill:
"A. MACKENZIE,
"Lieut. Col., Corps of Engineers."

May it please the Court, I have reached the limit of my proper preparation of this case. I gave to the case all the hours of yesterday afternoon and last night, but was able to go only so far as the documentary evidence went which
1395 I have submitted. I have had numerous witnesses subpoenaed, but have had no opportunity to speak to them, to find out what will be their testimony, and I am unwilling to produce witnesses any further whom I have not had an opportunity to confer with, and I ask the Court to grant me an adjournment until 11.00 o'clock tomorrow morning.

The Court: If there are no objections, the Court stands adjourned until 11:00 o'clock a. m. tomorrow morning.

(Court adjourned at 1.15 p. m.)

THOMAS F. BARR,
Col. & Asst. Judge Adv. Gen'l, Judge Advocate.

1396 UNITED STATES COURT ROOM,

Savannah, Georgia, February 12, 1898.

The Court met pursuant to adjournment at 11 o'clock, A. M.

Present:

All the members of the Court and the Judge-Advocate. The accused, his counsel, and the reporter, G. T. Cann, were also present.

* * * * *

1478 ARTHUR S. COOPER, recalled as a witness for the prosecution, being previously duly sworn, testified as follows:

Direct Examination.

Questions by the Judge-Advocate:

Q. Where were you employed Mr. Cooper, in April and May, 1896?

A. I was acting as engineer on the harbor, in charge of dredging and also in charge of placing some rock.

Q. Do you know where that part was where quarantine rock was being placed?

A. It was being placed on several dams, mainly on the Cockspur Island training wall.

Q. Was any record kept of the amount of stone that they placed there from the quarantine?

A. Yes, sir, a record was kept by the inspector.

Q. Have you anything to show what that record is?

A. I have his field notes and also the reports made by him.

Q. Have you them with you?

A. I have most of them with me.

1479 Q. How many loads does that show to have been taken from the quarantine station? Never mind that just now;—how many cubic yards of rock were placed on that work during those two months, April and May?

A. April and May?

Q. Yes.

A. Six thousand, seven hundred and forty seven, decimal 96, cubic yards, placed in April and May, 1896.

Q. How many barge loads would that make?

A. That was fifty six barge loads.

Q. Was that of Florida rock?

A. There was no Florida rock being delivered at that time, the Florida rock stopped in August, 1895.

Q. How much of that was ballast, Mr. Cooper?

A. Well, I think it was all ballast; there was no other source of supply at that time. I think it must have all been quarantine rock.

Q. Do the records show the arrival of the barges from any place except the quarantine station?

A. Mr. Daniels' field notes have no memorandum of any of those lighters, except one, and of that one he states it was obtained from Smith & Kelly.

Q. One barge load?

A. One barge load.

1480 Q. Received fifty-five of them, from where?

A. From some other source, probably, quarantine.

Q. Why probably?

A. Because I don't know any other source they were getting rock from at that time, except quarantine and Smith & Kelly.

Q. At that time, did you see them get rock from quarantine?

A. I was down the river usually three times a week at that time, inspecting dredge work, and repeatedly saw them loading lighters at quarantine.

Q. Whose lighters were they?

A. The Atlantic Contracting Company's.

Q. Mr. Cooper, I hand you a blue print, that is in evidence here,—will you point out where the dividing line between Cockspur Island and Long Island is?

A. It is right at this point, just a little ways between lower quarantine station—

Q. There? (Indicating)

A. Yes, sir.

Q. That point there?

A. Yes, sir.

Q. Coming in which way?

A. Going straight back, nearly from the front of the river.

This portion here is Long Island, and this portion here, is Cockspur Island; but on the ground a person can hardly see the line. There was formerly a passage where boats could go through, that is now choked up so boats cannot pass.

Q. It is about through there?

A. Yes, sir.

Q. About from a point opposite the "T" in Capt. Carter's name,?

A. I judge so, or possibly, beyond his name entirely, to the east.

Q. From that point a little to the east?

A. About that way.

1481 Q. Down there, down through there, just past his name?

A. Yes, sir.

Q. I am going to interrogate you in regard to this indorsement, the indorsement of January 10, 1893, "The proposed harbor line, in the vicinity of the quarantine station, near fort Pulaski, is shown on the accompanying drawing by the heavy red line. It is probable, however, that in the further improvement of the harbor, it may be necessary to make a cut between Cockspur Island and Long Island"—that is the line you indicated there?

A. Yes, sir.

Q. "For the purpose of throwing a greater volume of water across Tybee Knoll, on the ebb-tide, in which case a location, shown by the broken red line," that you have there, "Would be more desirable." "For that reason I am of the opinion that for the present there should be adopted provisionally a harbor line as indicated by the broken red line previously mentioned, and that no structures should be allowed to project beyond that line." Signed by Capt. Carter. Explain what that cut was or was to be?

A. I think that was a suggestion made by Mr. Gieseler, and incorporated in Capt. Carter's report, with a view to securing a flow of the water into south channel over the Tybee Knoll; Tybee Knoll being a place that usually shows up, he expected to secure a better flow over there, by drawing the south channel water and making a cut right through here, parallel to the training wall, and make it wide enough to get a considerable flow over the Knoll.

Q. What affect would that have had upon the quarantine station, and the quarantine station upon that?

A. That of course, would have depended upon the final decision as to where that should have been located. It
1482 most likely would have had to be very close to the quarantine station. In that case it would have put the quarantine station on the point of the island instead of in the centre of it, on the lower point with the water on both sides.

Q. What difference would that have made, the execution of that plan, whether the harbor line was that indicated by the straight line, or that indicated by the broken line?

A. If there was any choice between the two, I should have thought the heavier line would have been better.

Q. Is there any connection?

A. That is, you mean, if the cut was made through?

Q. Yes.

A. Well, I don't know there would be.

Q. Between the two lines?

A. I don't see that it would affect the question one way or the other; I don't see why it should affect it.

Q. What has the cut to do with the harbor line at all?

A. I don't know that it has anything to do with it.

Q. You think it would have any effect upon it whatever?

A. No, sir, not that I see.

Q. Point out on that map the place where channel, A, B, C was.

A. I can in a general way; I cannot very accurately. The channel follows in this manner, and A, B, C was going down this way, as shown on the chart; the old channel goes down to the red light, the old channel having very many turns to it, and the new channel going straighter. The channel, marked A, B, C, on the drawing introduced yesterday, the A point was about here (Indicating) B point about here, in this position (Indicating) and the C point here, joining the old channel; then my pencil follows the old channel in this direction.

Q. What is the relation between that channel and the channel proposed through Cockspur Island?

A. The cut through Cockspur Island?

1483 Q. Yes.

A. No direct relation.

Q. None at all?

A. No.

Q. What was the reason for the harbor line?
A. Do you mean this harbor line at the quarantine station?
Q. Yes.
A. I could not answer that, Colonel, I don't know.
Q. How much channel is there there in front of that point?
A. Do you mean how far the quarantine station is from the channel? The quarantine channel itself is right next to the wharf, and the shipping shannel is probably one thousand feet from the wharf.
Q. How wide is the river at that point?
A. Well, about 2,000 feet or a little more; I guess it is a little more than that.
Q. What is the opposite island?
A. This island straight across is not named, it is known as "Red Light."
Q. Is there a Jones Island there?
A. Jones Island is further up the river.
Q. Was there an engineering necessity to cut off that point, to make a channel in 1896?
A. If it was contemplated to put that channel there, A, B, C, I think it would have been advisable to cut that off.
Q. How about the natural channel on the opposite side?
A. If the natural channel is followed, the one that is used at the present time, there will be no necessity to cut it off.
Q. Is not it usual to follow the natural channel, if it can be done?
A. Well, sometimes there are reasons why the channel should be changed, and as has been changed on this harbor.
1484 Q. Was there any dredging done in the channel, A, B, C?
A. No, sir, there was no dredging done there.
Q. Not in December, 1893?
A. No, sir.
Q. Was there dredging in the natural channel in December, 1895?
A. Yes, sir.
Q. Was there dredging in April, 1896?
A. I think there was.
Q. There is the course of the natural channel? (Indicating)
A. Yes, sir.
Q. Here, I understood you? (Indicating)
A. A is about here.

Q. B?
A. Is about here.
Q. And C?
A. Right here, (Indicating)
Q. That would have been a change of the natural channel?
A. An entire change.
Q. And in April 1896, they were dredging over there? (Indicating)
A. Yes, sir, and also here, Colonel, in April. (Indicating)
Q. And in April also over near the other shore?
A. Yes, sir.
Q. And in April and May, 1896?
A. In April, 1896, the shoal next to Red Light, was dredged.
Q. That is in the natural channel, disregarding A, B and C?
A. Disregarding A, B and C.
Q. I would like to know where Tybee Knoll is.
A. Tybee Knoll begins about here (Indicating) and extends about a mile in that direction (Indicating) this channel here (Indicating) is known as Tybee Knoll channel.
Mr. Blair: I would like to have the witness again point out the line of the natural channel.
Witness: That is the natural channel (Indicating)
1485 Mr. Blair: That is the natural channel?
Witness: Yes.
Mr. Blair: All right.
Judge-Advocate: Who made that chart?
A. That is a progress sheet, showing the dredging on Savannah Harbor, as made by me at the end of each month, to show exactly where every cut was made on the harbor, and the date on which it was made.
Q. What is the scale?
A. Four hundred feet to the inch.
Judge-Advocate: I offer this in evidence; it is entitled, "Progress of Dredging Contract of 1892, Scale, one inch to 400 feet." It will accompany the record, marked Exhibit 268.
Here at 2.55 o'clock, P. M., the Court adjourned until Monday morning, February 14th, at 11 o'clock.

THOMAS F. BARR
Col. & Asst. Judge Adv. Genl Judge Advocate.

1486 UNITED STATES COURT ROOM,
Savannah, Georgia, February 14th, 1898.

Court met pursuant to its adjournment of Saturday, the 12th instant, at 11.00 o'clock a. m.

Present:

All the members of the Court and the Judge-Advocate.

The accused, his Counsel, and the Reporter, W. O. Tarver, were also present.

The President: Court will come to order.

Mr. Blair: My it please the Court, on Saturday I made a remark about the Court not being bound by the rules of evidence, and exception was taken to that remark by some of the members of the Court. The record, at page 335, shows that, in the examination of the witness Cooper, the Court asked a number of questions, and then the Judge-Advocate asked a question comparing the specifications of one contract with the specifications of another, to which Mr. Charlton objected, on the ground that the specifications were the best evidence themselves and that it was not fair to attempt to get that from the memory of the witness. Then the President of the Court said: "the Court is not now strictly bound by the rules of evidence, and the witness may answer the question. The Court adopts the question." Now, the explanation is somewhat personal to myself. I carried in my mind the statement made by the President of the Court that the Court was not bound by the rules of evidence as applying generally to any question which might be asked by the Judge-Advocate or by Counsel for the accused, and I see now, however, that the President meant to apply that rule, or that statement, to questions asked by the Court, because, the concluding portion of the President's remarks is that "The Court adopts the question, showing that the President had in mind that the Court itself, in asking the question, was not bound by the rules of evidence. I will say this: that other

1487 Counsel besides myself, carrying the recollection of that statement by the Court, had the same idea that I had, and that we have refrained from making objections because we presumed that was meant to apply generally to all questions.

The Court: The Court is sorry that this erroneous impression should have prevailed for this length of time. What the Court intended to convey was this: that questions asked by the Court cannot be objected to upon the rules of evidence. The Court can ask any question which it sees fit, to elucidate

the case. If Counsel will recollect, this witness had passed through the direct examination, the cross-examination and the re-direct examination, and had been turned over to the Court, and, after the Court had asked a few questions, Counsel wished to ask a few questions, which were adopted by the Court, and could not be objected to on the grounds of rules of evidence.

ARTHUR S. COOPER, a witness for the prosecution, previously sworn, recalled, testified as follows:

Direct Examination by the Judge-Advocate.

Q. When your examination closed Saturday, I had before you rather an unsatisfactory blue print. I have here now what is known in this case as Exhibit No. 264, a Map of the Oyster Bed Shoal, Savannah Harbor, Ga., 1896. I will ask you to take that, and point out the line of the projected channel of A—B—C.

A. A B C is the channel beginning with the lower end of Long Island, crossing at point A and extending down to in front of Fort Pulaski where it is marked B, and then joining Long Island range at point C, and the old channel flows back in this (indicating) direction.

Q. That, then, (indicating) is the natural channel there?

A. Yes, sir.

Q. And A B C starts there and follows that red line; 1488 how many turns does that A B C channel make?

A Three turns.

Q. Did you make an estimate of the cost of excavation attendant upon that project?

A. I made an original estimate in February, 1896, at Capt. Carter's request, of the number of yards it would take to dredge channel A B C only 100 feet wide, and, as I remember, that estimate was one hundred and fifty thousand cubic yards.

Q. What would that have cost?

A. At 16¢ a yard, that would be $24,000, but estimating that the Government would have to cut off and remove these quarantine wharves,—cut off and set them back,—it would probably add about $15,000 for removing and replacing these

wharves, and about $9,600.00 dredging besides. That would make the total estimate for the channel $48,600.

Q. And what was expended for dredging in the natural channel that was about opposite this point?

A. This other on range No. 5 and also on Elba Island range,—there was done after that date on that channel 130,000 yards of dredging.

Q. (By the Court) What was that added $15,000 for?

A. For taking up and moving back the quarantine wharves.

Q. (Judge-Advocate continuing) That would have been necessitated by the adoption of the line A B C?

A. Yes, sir.

Q. How much more would it have cost to have excavated there and set back these wharves and done the necessary dredging than was expended in April and May on the main channel?

A. It would be about these two items, the removal of the docks and the extra dredging; a little more than that, however, because this was 150,000 yards, whereas there was actually dredged after that 130,000 yards out of the old channel.

Q. What advantage was to be derived from the adoption of the A B C channel.

1489 A. That channel is a much better channel than the old one. The turns are not so abrupt.

Q. Couldn't any turns whatever have been avoided?

A. You could have avoided two turns. You could have avoided the turn at A and the turn at C by producing range No. 4 at Long Island crossing until it met the line of the Long Island range back here; (indicating) then you would have had only one turn at point corresponding to B.

Q. How much more expensive would that be?

A. Considerably more expensive. I have made two estimates on this channel, one for 250 feet in width. The estimate I gave you was for 100 feet in width.

Q: What was the width of the natural channel?

A. 250 feet.

Q. What is your estimate?

A. My estimate of this straight channel I have just described is $125,000.00 at 250 feet in width, and the channel A B C, 250 feet in width, including the removal of the quarantine wharves and placing them back where they would be

out of the way of the channel would be $96,000.00; that is, both channels 250 feet.

Q. What advantage would the adoption of that central line have been for the Government, as to the future?

A. It would be a much straighter channel, and consequently the flow would be more apt to maintain itself than it would in this other channel. There had always been trouble at this point on account of these sharp turns.

Q. Liable to shoal up?

A. Yes, sir; liable to shoal up. Shoaling has taken place there frequently, and this straight channel would be more apt to maintain itself.

Q. It has been stated here that the establishment of the quarantine at this point, that is, the upper quarantine, threatened the channel; what is meant by that statement that has been made?

1490 A. There is something in that. These wharves project out into,—not into the channel exactly, but they are so built that they project into the strong flow on that shore, that being what they call the ebb tide bight of the river, and these ballast piles projecting out here, did obstruct the flow more or less.

Cross-Examination by Mr. Blair.

Q. You have given your opinion here as an expert on various engineering questions. I wish you would state what your experience as an engineer has been? Where were you graduated?

A. I graduated at the University of Wisconsin in 1881, after a four years course in the engineering department of the University of Wisconsin.

Q. A four years engineering course?

A. Yes, sir.

Q. Then what was your first service?

A. My first service was with the American Bridge Co., Chicago.

Q. Doing what?

A. Working up the details of construction of bridge work in the office. I will state that I had made a specialty of bridge work while at college, and intended to go into that branch of the business, and was employed by the Bridge Co., but the Company failed about that time, and the Chief Engineer of the

Mexican National Railroad came to Chicago about that time, and I went with him to Mexico.

Q. What did you do in Mexico?

A. I was working on different plans of construction work in the office,—in the office of the Chief Engineeer.

Q. Railroad engineering?

A. Railroad engineering.

Q. How long did you stay there?

A. About six months.

Q. That brings you to 1882, does it?

1491 A. Yes, sir.

Q. Where did you go in 1882?

A. I was then employed with the Cleveland Bridge & Power Works for awhile at Cleveland, Ohio.

Q. What sort of work.

A. The same work I had in Chicago,—bridge work; details of construction of bridge building.

Q. How long did you stay there?

A. Only a few months, and then I was employed down to the Nickel Plate Road from Blockton to Buffalo, New York State.

Q. Railroad building?

A. Railroad building.

Q. Where did you go then?

A. From there I went to the Department of the Missouri, under the Chief Engineer of the Department of the Missouri.

Q. What sort of work there?

A. Topographical work,—on surveys and maps,—locating military reservations and work of that nature.

Q. What year did you leave there?

A. 1884.

Q. And came down here?

A. Came here.

Q. Then your experience in hydraulic engineering is limited to Savannah Harbor and Cumberland Sound, is it not?

A. No, sir; it is not.

Q. In what particular has it expanded from that?

A. I have had about six months experience on harbor construction at Segua, Cuba. Then after that I served as City Engineer of Superior.

Q. Wisconsin?

A. Wisconsin. As City Engineer, I had charge of $750,000.00 worth of work,—sewer work and also considerable har-

bor work,—about $150,000.00 worth of docking and dredging.

Q. Any tide there?

1492 A. No, sir; it was on the Lake.

Q. No running water?

A. Yes, sir; river emptying into the Bay.

Q. Was this on the river front?

A. Partly on the River front and partly on the bay.

Q. What other engineering experience?

A. Getting up sewer plans for West Duluth.

Q. What other hydraulic plans?

A. I think that was all.

Q. Then, with the exception of your work at Superior and your six months work in Cuba, your experience as an engineer in hydraulic engineering is limited to the harbor here and at Cumberland Sound?

A. In this district?

Q. Yes, in this district?

A. Yes, sir; in this district.

Q. Now, what engineering work have you done here in this engineering district?

A. It would take considerable time to tell that; I have had charge of a great many pieces of work. I can give you the main part of it briefly. I have had charge of the construction of the main part of the jetties in Savannah Harbor; that is the principal item.

Q. That is the work of an Inspector?

A. No; as an engineer.

Q. What engineering features did you have under your charge?

A. The construction of the jetties.

Q. Located by Capt. Carter?

A. No, sir; that is, he gave me the plan for the location, but I located the jetties myself.

Q. And the unskilled labor of the contractors' put the mats down,—that is true?

A. Yes, sir.

1493 Q. You didn't locate the jetties as an engineer, did you?

A. I located them on the ground, but not on the plan.

Q. You took the plan drawn by Capt. Carter, or under his instructions, and you followed that plan?

A. I followed that plan.

Q. What engineering skill did that involve,—or engineering discretion?

A. It involved considerable on account of the difficulties of construction. It is very easy to put on paper the location of a dam, but it is another thing to go and build it.

Q. What did you do as an engineer?

A. It requires a good deal of discretion, in many cases; a man may over-load his mats, and tip them over, or he may under-load them and storms tear them to pieces. It requires great experience and judgment to construct these jetties so that they will stay there.

Q. You were told to sink the mats and put the stone on them?

A. Yes, sir.

Q. And your engineering judgment came in just how?

A. Just as I told you.

Q. Pointing out the place to sink the mat?

A. No, sir; in the operation of sinking them, and using the proper amount of stone upon them, and seeing that they were not left in such condition that they would be destroyed, and matters of that kind.

Q. The mats were not built under your direction, were they?

A. No, sir.

Q. You simply inspected the mats?

A. Yes, sir.

Q. And inspected the stone?

A. Yes, sir.

Q. And you say you pointed out the places where the mats were to be sunk?

A. Yes, sir; located them instrumentally.

1494 Q. Did you actually do the work,—the instrumental work,—in locating them?

A. In a great many cases.

Q. What did you do that with?

A. The transit.

Q. That is the business of a surveyor, is it not?

A. Surveyor and engineer.

Q. It comes under the general head of surveying?

A. No, sir; I don't think so.

Q. What does it come under?

A. Under the general head of engineering.

Q. Then in addition to locating the places where the mats were to go, instrumentally, and, in addition to indicating to

the contractors where the mats were to go, and in addition to determining the amounts of stone that went upon the mats, what else did you do from an engineering standpoint?

A. It is simply a matter of judgment as to which dam should be built first, and, in order to facilitate the work, you would have to be working a good many times in different places at once, and, if one part of the work was pushed ahead of another, it might damage that other.

Q. And to whom were the questions referred as to whether one jetty should be pushed and the other stopped?

A. I have always consulted with Capt. Carter on that subject.

Q. You consulted with Capt. Carter, did you?

A. Yes, sir.

Q. And the result of the consultation was that you did thus and so?

A. Yes, sir.

Q. Went on with the work?

A. Yes, sir.

Q. Now, what else did you do?

A. I think Capt. Carter mainly relied on my judgment on that. I would talk the matter over with him, and say
1495 what I thought ought to be done, and he would say go ahead and do it.

Q. What else did you do as an engineer in this district?

A. I have had charge of a great many surveys in Savannah Harbor, and had charge of surveys on the Atlamaha, Oconee and Ocmulgee, and had charge of the construction work at Darien.

Q. You gathered your data from the instruments which you used,—by means of the instruments?

A. Yes, sir.

Q. In all this surveying work?

A. Yes, sir.

Q. You committed this data to paper, and they were turned into the office here?

A. Yes, sir.

Q. What other engineering work have you done?

A. As I said, I had charge of the construction work at Darien.

Q. The same sort of construction you have described?

A. The same as at Savannah Harbor?

Q. Putting the mats where indicated?

A. Yes, sir; then as I had charge of the Harbor work at Fernandina for one season.

Q. Leaving out your Cuban experience and your Superior experience, what plan did you ever originate, as an engineer, with reference to the improvements in this engineering district?

A. I have had a good deal to say in regard to planning the Savannah Harbor work in talking the matter over with Mr. Geissler. We would consult as to the advisability of different parts of the work, and my judgment was very often taken in preference to that of Mr. Geissler.

Q. What original conception ever came to you with reference to the plan of engineering work in this district?

A. I was not in charge of Savannah Harbor. I was only in charge under Capt. Carter. It was not my place to draw up the plan, and I was not asked to draw up the plan.

1496 Q. And in fact you never did?

A. Never did; never did claim any credit for planning the work in Savannah Harbor.

Q. Nor of Cumberland Sound?

A. No, sir; never did. I was simply executing the plans given to me to execute.

Q. Did you see every mat that was sunk at Cumberland Sound or Savannah Harbor?

A. Which contract do you refer to?

Q. All of them?

A. No; I didn't see all of them; but on this Savannah Harbor contract,—that big contract,—I think I saw at least nine-tenths of them.

Q. You were an inspector then, were you not?

A. No, sir; I was assistant engineer. I never served as Inspector on Savannah Harbor but one year,—the first year I came here.

Q. Now, when you saw nine-tenths sunk under the big contract, there was an Inspector under you?

A. Usually four Inspectors.

Q. And did the inspector have anything to say about where the mats should go?

A. No, sir.

Q. You did that?

A. I did that.

Q. And the other tenth that you didn't see sunk, who located those.

A. Those I didn't see go in, I told them where to put

them in all cases; there was no mat sunk without my direction.

Q. Have you been a student of engineering while you were at work in this district?

A. I keep up with all engineering subjects; I take seven or eight engineering publications, and read them all.

Q. You are familiar with the co-temporary literature of engineering?

A. I am.

1497 Q. Particularly hydraulic engineering?

A. As pertains to harbor work; I would not pretend to be an expert on the construction of water-works or anything of that kind, for I have had no experience in that; all my knowledge of that is theoretical.

Q. You think you are an expert on harbor work?

A. I think I am reasonably so. I do not pretend to stand at the head of the profession.

Q. Dod you happen to carry in your mind the formula for the flow of water in an open channel?

A. No, sir.

Q. That is a fundamental proposition in harbor work, is it not?

A. It is not necessary to remember these things; we always have books of reference that we can refer to.

Q. Upon what does the velocity of a stream depend?

A. It depends upon the slope and also the size of the stream and very largely the depth. If it is a shallow stream, there would be more friction on the bottom and sides.

Q. Does it depend directly upon the head?

A. Well, the head and the slope would come together.

Q. The head and the slope are the same thing?

A. No; not exactly.

Q. In what do they differ?

A. The slope is the inclination of the river as between two points, and that slope may vary between any two; say, for instance, a slope may vary in that distance if it is a very small stream.

Q. What is the head?

A. Head,—you could hardly apply that to open water. The head would be applied to confined bodies of water.

Q. Then in harbor and river work, you don't speak of the head of the water?

A. No, sir.

Q. You speak merely of the slope?
1498 A. The slope.
Q. Now, then, does the velocity vary directly with the slope?
A. No, not entirely. It depends somewhat upon the size of the stream and the depth of the stream, on account, as I said before, the friction on the bottom.
A. Does any other element enter into it?
A. Nothing but the slope and the size of the stream and the friction on the bottom.
Q. In general, what causes water to flow?
A. The fact that one place is lower than another, or that may be produced by tidal phenomena; it may be, the rise of the tide may make it lower or higher in one place, and flow from that place to the other, or it maybe in one place the simple flow of the natural stream.
Q. It is gravity, is it not?
A. Gravity; yes, sir.
Q. Is the flow,—the velocity,—a direct function of the gravity?
A. No, sir; it would be if there was no friction on the sides of the river.
Q. And the only other element you take into consideration is the friction?
A. That is all.
Q. With that exception then, the velocity varies directly with the slope or the gravity?
A. I think it would; not directly,—there is constant quantities going in there. You would have to apply the formula. If it is twice as steep, there would be more than twice the velocity; it is not a direct ratio.
Q. What kind of a ratio is it?
A. It is a formula, and would have to be worked out by the formula.
Q. Does it vary indirectly?
A. As I said before, you must work it out by the formula.
You can not multiply that by two or three or any direct
1499 ratio; you have to apply the formula in all that work.
Q. That is a simple formula, is it not?
A. Yes, sir; a very simple formula.
Q. But you don't remember it?
A. I don't remember it.
Q. Did you ever hear of a formula V equal to C into the square root of R S?

A. Yes, sir.
Q. What is that formula?
A. What is that formula again?
Q. V equal C into the square root of R S?
A. What does S signify in that?
Q. I am asking you if you ever heard of that formula?
A. Yes, sir; it applies to hydraulics, but I don't remember just now what S stands for; that would be given in the explanation of the formula when you refer to the text books.
Q. Is not that a fundamental formula in hydraulics?
A. That is used in hydraulics.
Q. Is it not a foundation formula?
A. You have got to bring in other matters there.
Q. In the hydraulic formula V equal C into the square root of R S, what would you say V means?
A. Velocity.
Q. What does C mean?
A. Some constant quantity.
Q. Some constand coefficient?
A. Yes, sir.
Q. What is R?
A. R probably stands for the perimeter.
Q. For the perimeter?
A. Yes, sir, or the depth.
Q. Which?
A. Both.
1500 Q. R would be both the depth and the perimeter?
A. In some cases it would be the depth.
Q. And what would S be?
A. That I don't know.
Q. And yet you say the velocity of a stream depends largely, if not exclusively, upon the slope, and, in this formula, you don't know what S means?
A. You misunderstand me. I didn't say that. I said it depended upon the slope and also the size of the stream,—that is, the friction on the sides.
Q. What would S be, the friction or the slope, in a hydraulic formula in which V represents the velocity of the water?
A. Most likely S represents friction.
Q. Then you would have your velocity dependent upon the constant co-efficient C into the square root of the perimeter multiplied by friction?
A. Yes, sir.

Q. And you say that as an engineering expert?

A. As I told you before, I don't remember these formulas. If I was going to apply them I would look them up, and see what the explanation was where the formula is given. You always find them in books of reference, and engineers are not expected to remember all the formulas which they may use. I have used the formula for getting the velocity of the stream on the Oconee, the Ocmulgee and the Altamaha, and there is another quantity in that formula that you didn't give, —N.

Q. What would N mean?

A. I don't remember now; something about when you apply the pole float,—the distance from the float to the bottom of the stream has to come into the question in all matters of that kind, but an engineer cannot remember all of these things. If he wants to use them, he looks them up. You don't remember all of your legal references; you don't keep them in your mind.

1501 Q. I keep a few of them; the fundamental ones I think I remember.

A. You know where to look for them if you want them; you know where to find them.

Q. Oh, yes, I know the two different kinds of knowledge. Now, let us come back to R again, and find out what that is; you say it is the perimeter or the depth, did you say that?

A. I say I don't remember exactly all these matters. I know in working out the flow of a stream, you take into question the slope and the perimeter; that is, the distance from the point where the water strikes the shore on one side to the point where it strikes the shore on the other side; that whole area has to be taken into question.

Q. Is that the perimeter, that whole area?

A. Not the whole area, but the whole distance.

Q. Which distance,—on the surface of the water?

A. No, sir; not on the surface,—the bottom of the stream.

Q. Then that is the perimeter?

A. As I remember it, I think that is the perimeter. I would have to look up these matters; I didn't expect to have to pass a civil service examination when I came in here. If you want me to pass on these questions I would have to look them up.

Q. I want to find out how much of an expert you are. I want to know what the perimeter is?

A. That is my understanding of it.
Q. It is the distance measured along the bottom, is it?
A. Yes, sir.
Q. R represents that in the formula I have given you?
A. That is my recollection; I may be wrong.
Q. R usually stands for radius?
A. Yes, sir.
Q. But in this formula, it stands for perimeter?
A. Yes, sir; that is my recollection.
Q. Did you ever hear of such a thing as the mean hydraulic depth?
1502 A. Yes, sir.
Q. What is it?
A. The mean hydraulic depth is the mean of all the depths across the river or the stream to which you wish to apply the formula.
Q. And R/ would probably stand for that in the formula?
A. It might in some cases, yes, sir. It just depends upon what value has been placed upon R. R is used in a great many ways. It usually means the radius of a circle, but in other matters, it might mean something else. It means just whatever you wish to apply it to.
Q. But in the formula of velocity in an open stream?
A. It might mean the hydraulic radius.
Q. And not the perimeter?
A. Yes, sir.
Q. And S might mean or be the sign of the slope, might it not?
A. It might.
Q. The natural sign of the slope?
A. It might.
Q. Then you would have your velocity varying as the square root of the hydraulic radius multiplied into the sign of the slope, would you not?
A. Yes, sir.
Q. And that formula you say you don't carry in your memory, but you will find it in the books?
A. Find it in the books.
Q. As a hydraulic engineer, you would go to the books to find it?
A. Yes, sir.
Q. How wide is the present channel opposite the quarantine now?

A. 250 feet where the dredging has taken place, and where the natural channel is it may be wider.

Q. Is it wider?

A. It is wider in some places.

Q. How much wider?

1503 A. In some places there is a depth of twenty-six feet of water as wide as one thousand feet.

Q. In your estimate of 150,000 square yards necessary to make a straight channel across the Oyster Bed, did you estimate that material in place or on the scow?

A. You misunderstood the estimate; that 150,000 square yard estimate was on channel A B C.

Q. Well, on channel A B C, did you estimate that in place or on the scow?

A. All these estimates were in place. I will state, however, that these estimates are very rough, and might vary ten or fifteen per cent either way, more or less.

Q. What is the difference you make in your estimate in place and on the scow?

A. About ten per cent probably.

Q. Which would be the greater?

A. The estimate in the scow would probably exceed the estimate in place by about ten per cent.

Q. Was any dredging ever done on A B C range?

A. Not to my knowledge; not since I have been in the harbor.

Q. You are sure about that, are you?

A. I am positive; yes, sir.

Q. How wide would the channel have to be along the A B C range to be as wide as the present channel?

A. 250 feet.

Q. Between what points?

A. Between A and C.

Q. Between what curves?

A. What depth, you mean?

Q. Yes?

A. It would have to be about twenty feet deep, and I estimate my dredging to twenty-one feet, in order to secure twenty.

Q. And two hundred and fifty feet wide?

1504 A. Yes, sir.

Q. How wide is it between the twelve foot curves and the present channel?

A. I don't know; I would have to scale it on the map.

Q. Would you say it is five hundred or a thousand feet?
A. Let me see the tracing.
Q. From your memory, what do you say?
A. I don't remember where all the curves are in Savannah Harbor; there are too many of them.
Q. You ought to be pretty familiar with them; you have done a great deal of engineering work here?
A. I am probably more familiar with it than you are.
Q. I want the depth of the present channel between the twelve foot curves?
A. At what point?
Q Say here (indicating, that is nearly opposite B?
A. About one thousand feet.
Q. You say that there was some talk about cutting through Cockspur Island, and making a new channel, or making a cut through Cockspur Island so as to come in where?
A. The cut would probably—It never was located, but, as I understood the project, it was about in this (indicating) direction, coming in nearly parallel with this.
Q. And for what purpose,—for what engineering purpose?
A. It was for the—This project, by the way, it was stated in the original statement that it might be necessary, but it wasn't stated that it would be done. That cut,—it was stated that it might be necessary. It was stated in one case that the flow on Tybee Knoll channel was not sufficient to maintain that channel, and it might be necessary to make this cut through here, (indicating) in order to secure ebb tide flow sufficient to maintain the depth over Tybee Knoll channel.
Q. On what engineering principle would it be cut 1505 through Cockspur Island to join the proposed channel?
A. It would be cut so as to have the flow as nearly parallel with the flow in the other as possible, because it is a well known principle that, if two streams come together at a sharp angle, it will produce eddies and fill up, and the nearer parallel you have them meet, the better,—the same as it is in sewer construction; you must have the intersection as nearly parallel as you can.
Q. Then that project, you say, was abandoned?
A. Yes, sir; it was found that it was not necessary, because sufficient flow was secured to maintain this depth across Tybee Knoll channel.
Q. Where was the original channel when you came here between Cockspur Island and Oyster bed training walls?

A. (Indicating) This channel here.
Q. That was the original channel when you came here?
A. Yes, sir; some smaller boats came up this (indicating) way, but any vessels of any draught came up this (indicating) way. At that time, in 1884, there was no channel around this (indicating) way.
Q. And that (indicating) was the channel, was it not?
A. No, sir; both of these channels; just as many came this (indicating) way as that (indicating) and possibly more.
Q. What is this Island named?
A. Oyster Bed shoal.
Q. The Island on which the red light is?
A. The red light. The main body of the shipping took this channel (indicating) here.
Q. In 1884?
A. In 1884.
Q. When was Dam No. 31 built?
A. In 1885.
Q. What for?
1506 A. For the purpose of stopping this (indicating on map) channel, and making the water flow down this way, and instead of having the water flow on both sides of this Oyster Bed shoal, it would flow on this side.
Q. With what point does Dam No. 31 connect?
A. When Dam No. 31 was built, it connected with only one point; the middle of it was out in the center of the stream, and the other end was on Oyster Bed shoal; it was built up to about three or five feet above low water.
Q. And was any extension made?
A. An extension was made in the 1896 contract.
Q. In a north-westerly direction?
A. The direction was very nearly the same; it turned twenty-five or thirty degrees, and went across to Turtle Island.
Q. Thereby closing that channel?
A. Not entirely,—twenty-five or thirty feet left in it.
Q. The effect of Dam No. 31 was to give you an increased flow on the present channel?
A. The effect of the extension?
Q. The whole structure?
A. I don't think the extention had any effect on that channel. The original structure did. It was expected that the extension would have an effect on it, but it did not as a matter of fact.

Q. Going back to the A B C range, in order to make that channel as practicable and as safe as the present channel, what yardage would it be necessary to remove?

A. Making it 250 feet wide, just the width of the channels dredged in Savannah harbor, it would be 440,000 yards, roughly.

Q. Now, in order to make it as practicable and as safe as the present shannel, what yardage would be necessary to dredge?

A. Four hundred and forty thousand.

Q. Making it uniformly two hundred and fifty feet wide?

A. Yes, sir.

Q. Although the present channel is, in places, consider-
1507 ably over one thousand feet?

A. No, not where it is dredged, it is not; wherever it is dredged, it is only two hundred and fifty feet.

Q. As a fact, as a physical fact, the present channel is, in places opposite the A B C range more than a thousand feet wide?

A. No, it is not.

Q. At no place?

A. That point I showed you was between a twelve foot curve. A twelve foot curve does not express the channel; it would take a twenty foot curve to express the channel.

Q. Is there no place between a twenty foot curve opposite the A B C range one thousand feet wide?

A. I don't think there is; let me see the chart, and I can tell you.

Q. (Handing witness chart) Now, looking at that tracing, how would you answer the question?

A. Well, may be pretty near it; somewhere near eight hundred or nien hundred feet in places.

Q. Then in making that dredging estimate, you didn't estimate the making of a channel as wide as the present channel?

A. Not as the natural part of the channel. I have made it as wide as the dredged part of the channel. In this estimate I made, I will state that, at the turning point, I estimated it considerably wifer than two hundred and fifty feet, —nearly four hundred feet, so as to give vessels a clear chance to turn; that is included in this estimate.

Q. And if you were going to dredge to make it as wide as the present chanel, that estimate would be very largely increased, would it not?

A. No; I would not change my estimate; I would estimate on the same basis to be dredged in all places in Savannah Harbor; I see no reason why one place should be dredged wider than another.

Q. I asked you the mere arithmetical question, if you
1508 were going to dredge it as wide as the present channel, your estimate would be greatly increased, would it not? In other words, twice two are four?

A. Possibly you would not dredge it in the same shape that natural channel is, because in some places it is wide and in some places it is narrow.

Q. I am putting a suppositional case. If you were going to make it as wide as the present channel, your yardage estimate would necessarily be increased, would it not?

A. As I say,—

Q. Can you answer that question Yes or No? If you were going to dredge the channel along the A B C range as wide as the present channel now is, would not your yardage estimate be greatly increased?

A. I would say yes, but I would qualify that by saying that it would not be a proper way to dredge it.

Q. I am not asking your opinion as to the propriety of doing it; I am asking you as to a physical fact?

A. That is true; but I simply put that explanation on the end of it.

Q. Opposite the red light on the present chanel, as a matter of fact, how wide was it actually dredged?

A. That was dredged wider than 250 feet on account of it being right at the turn; exactly how wide, I do not know; I think probably 325 feet, possibly more.

Q. Nearer a thousand, was it not? Nearer 1,000 than 325?

A. No, sir.

Q. Was it as much as eight hundred?

A. I don't think it could possibly have been over 350.

Q. Was it dredged south of Black Buoy No. 11?

A. No, sir.

Q. Never since you have been here?

A. It was some years ago, but not in April, 1896.

1509 Q. I asked you at any time,—how wide was that channel opposite red light dredged?

A. At one time I think it was dredged somewhere near eight or nine hundred feet, but not down to the full depth; that was only to fifteen or sixteen feet.

Q. And how wide was it dredged to the full depth at that time?

A. That I do not know; I could not tell you.

Q. Now, as a matter of fact, nearly opposite the red light, the channel has a practicable depth for most vessels of about one thousand feet in width, has it not?

A. In most places. I think there is one place right opposite the Black buoy No. 11 where it is a little narrower than that,—probably not over four or five hundred feet.

Q. On A B C range, the water is shallow?

A. Quite shallow in some places.

Q. And you estimate contemplates dredging to the proper depth only on a 250 foot cross section?

A. 250 feet at the base; I figured the slope three to one on the sides.

Q. Three to one?

A. Yes, sir.

Q. In order to make that channel as practicable as the present channel in the vicinity of the red light, would you not have to dredge very much more than your estimate calls for?

A. Perhaps so; that is, if I had the depth on the sides the same as at the red light, it would be considerably more.

Q. Very considerably?

A. I say to have the depths of the side the same as at the red light channel, it would be considerably more dredging.

Q. You made surveys in the vicinity of the Oyster Bed training wall and the Cockspur Island training wall, and the Breakwater, the detached extension, didn't you?

A. Yes, sir; in October I made surveys of all these.

Q. And those maps are in evidence?

1510 A. Part of them are; the actual pattern of the surveys I think are not in evidence,—simply the compilation from the surveys.

Q. Who made the compilations?

A. They were made generally by myself and Mr. Grundel, the draftsman in the office.

Q. And your work is correct in all matters, is it?

A. There may be errors in it.

Q. Yes, your personal equations and other errors, but approximately your work is accurate and correctly done?

A. As near as I could; of course, there is no such thing as actual accuracy in that sort of work.

Q. But there is no intentional error?

A. No, sir; there is not.

Q. You personally made the surveys upon which those three charts are founded?

A. If you look at it in that light, I did not; I was in charge of the surveys.

Q. Made by your assistants and partly by yourself?

A. Yes, sir.

Q. Who worked under you?

A. The leadsman was Fred Jones, who is living on Tybee now.

Q. A fairly accurate man?

A. I found him a good leadsman.

Q. You used a lead, did you?

A. Yes, sir; done with lead.

Q. Not with a pole?

A. No, sir; the transitmen were Mr. Hale and Mr. Gignilliat.

Q. Good men at that work?

A. I think so.

Q. Then the data which you got yourself and through these assistants were turned into the office, were they?

A. Yes, sir.

Q. As far as you could check such matters, those data are accurate?

1511 A. Well, my notes were turned into the office, and Mr. Grundel did all the platting. I had nothing to do with that at all; and, after he had finished the platting on Oyster Bed and Cockspur Island Walls, the crest of that being so narrow, the plat of this cross-section, in a good many instances, would skip that crest, and would not show it, and, in order to show that crest, I took a sextant, and, at low water, went on that wall and took different points, and located a point where I set up two angles with the sextant on the shore, and then sketched in between those points, to show the height of this crest; otherwise, the crest would have been much lower than it should have been, because the cross-sections might miss that, it being so narrow. This explanation I give was a matter of checking that data; that is the way I give it.

Q. Now, answer the question, please. I want to know if the data were correct as far as you could check it?

A. I believe it to be correct; as I said before, there may be errors in it.

Q. Correct in an engineering sense?

A. The survey might have been more extensive. I might have taken sections at closer intervals, but for the time I spent on it, I think it an accurate survey.

Q. Good work and fairly accurate?

A. Fairly accurate.

Q. And that is true with the data accumulated with respect to the Cockspur Island training wall and the Oyster Bed training wall and the detached extension?

A. I think so.

Q. Which survey did you make last?

A. The breakwater.

Q. That is the detached extension, it is called?

A. Yes, sir.

Q. And when did you make the Oyster Bed training wall survey?

1512 A. The Oyster Bed training wall survey I think was made on the 2nd day oc October, 1897, and the Breakwater I think was made on the 7th day of October, 1897.

Q. And the Cockspur Island training wall?

A. The Cockspur Island and Oyster bed were made together. I made the inner half, I think on the 1st of October, or sometime in September.

Q. All that was made with a lead, was it?

A. Yes, sir; all made with the lead. I surveyed the two inner halve on one day and the two outer halves on another,—two days work.

Q. And you turned in your original bottom to the office?

A. Turned in the original notes; turned in the notes without reducing them even. The tide gauge was applied by Mr. Grundel, and the notes were reduced by Mr. Grundel; I had nothing to do with it.

Q. But you got the depth of the original bottom before you went in?

A. At that stage of the tide, but I didn't apply the tidal correction.

Q. That is true of all these charts?

A. Not all; sometimes the notes were reduced in the field, and turned in with the soundings corrected ready to plat.

Q. You got the data on all those three surveys?

A. Yes, sir.

Q. The three jetties, including the detached extension,—you got the data upon which the bottom was subsequently platted?

A. Yes, sir; I collected all the information, detail observations and all.

Q. Was that the original bottom? In every instance, is the original bottom shown?

Q. How do you mean? Do you mean the original bottom at the time my survey was made or at the time the jetty was built?

Q. I mean at the time the jetty was built?

A. At the time the jetty was built, the bottom was taken from my construction profiles.

1513 Q. On all three of the jetties?

A. No; the original bottom was taken from my construction profiles on Oyster Bed and Cockspur Island training walls, and on the Breakwater, it was taken from the survey I made Feb'y 3, 1896.

Q And in that, you got the depth of the water, and it was subsequently corrected for the tide, is that right?

A. Yes, sir.

Q. You got the actual original bottom?

A. On Feb'y 3rd, the original bottom was taken, and then again when I made the survey of October 7, 1897; the original bottom was platted from those two surveys.

Q. When did you get the original bottom of the extension?

A. Feb'y 3, 1896.

Q. Before any work was done?

A. No; at that time, nearly 1,000 feet of the wall had been built.

Q. And as to this already built, you sounded over the mats as they went down?

A. Yes, sir; in making the profile of that 1,000 feet already built, I judged somewhat from the soundings taken as the mats were sunk and somewhat from the soundings on the side of the mats as shown by my survey of February 3rd.

Q. And you took those soundings?

A. Yes, sir.

Q Did you on Oct. 6, 1897 survey—Did you determine the character of the bottom?

A. Not at that time; I knew the character of the bottom, because I had been on the construction work, and knew just what it was.

Q. You took soundings with a lead?

A. Yes, sir.

Q. A lead does not determine the character of the bottom?

A. No, sir.

Q. How did you know, then, when you were on the jetty and when you were off with the lead?

A. If you struck rock, you would feel that with the lead.

1514 Q. And if you didn't strike rock?

A. In regard to that point, I will say that I didn't require the leadsman to call out what he struck, whether rock or sand. I simply depended on the location of the jetty and the location of the soundings. If it platted a little off of the jetty, and the depth was so as to make it appear on the jetty, that sounding would be considered in that cross-section, and vice versa, if that sounding was so deep as to make me think it was off the jetty when it was on, it was thrown out of that section.

Q. How did you locate the soundings?

A. By two instruments,—one instrument on the head of the piles at the Breakwater and the other Instrument on Tybee light, consequently my intersections were at a right-angle; the greatest angle I had was perhaps sixty degrees.

Q. And how close could you locate the sounding in that way?

A. With these two instruments?

Q. Yes, sir?

A. I suppose within twenty feet; most likely within ten feet, but could be sure of it within twenty feet.

Q. What was the use, in taking these observations, to locate your soundings if, when you thought your sounding was too deep, you threw it out, and if, when you thought it shallow enough to indicate the jetty, you kept it in?

A. For this reason: If I did not locate my sounding, I would not know where my section was taken; I would not know whether it was at right-angles to the jetty or whether it was twisted all out of shape. I had to have these locations to show just where that section was, and to see if my line was near enough at right-angles to complete that survey.

Q. That was the only object?

A. The only object; otherwise I might have gone out there without any instrument at all if I could have located the point of the dam accurately enough; it would not have been necessary to have located it instrumentally.

1515 Q. Then when you got too much depth, you would say that is not the jetty?

A. You would have to use your judgment; would have to refer to both charts, both before and after, and see.

Q. Then with respect to the soundings which you thought too deep, and therefore threw out, because, as I understand you, you concluded that they were not on the jetty, that was a mere surmise on your part?

A. Yes, sir; it was. My surmise was this: my surmise was that my location was probably a little in error, and, if I left that sounding in, it would make the mean height of the jetty much less than it ought to be.

Q. And then when you got this data all together, you made your cross-sections or your cross profiles,—you calculated the mean height?

A. Calculated the mean height and also the center section. The mean height is shown in one longitudinal profile, and then in the other original profile, the actual profile of the center line is shown by myself by soundings that came at the actual center.

Q. And that shows the actual crest?

A. The actual crest of the center line; or if you take the mean, it shows the mean of the entire breakwater from side to side.

Q. Now the original profile you spoke of, along the center line, that shows the actual height?

A. Of the center line.

Q. Your mean height is, of course, a purely imaginary matter?

A. Yes, sir.

Q. There is no such thing, as a matter of fact, as a mean height to that jetty?

A. No, sir; that was simply put there for the purpose of illustrating what the height would be if the dam was levelled off.

1516 Q. In order to be perfectly clear about it,—assuming this book to be two inches thick and this next to be one inch thick, and the distance across each book to be the same, what would the mean height be?

A. It would be one inch and a half.

Q. It would be an imaginary line drawn half an inch——?

A. Half an inch below that and half an inch above the other; in other words, half an inch cut off the first book and put on to the other, and it would be level.

Q. Then, let us have another book on this side the same width as the other two and one inch high, what would be the mean height with this middle one two inches and two side ones one inch?

A. It would be one inch and a third on that basis; wait a moment, I have made a mistake,—one and about six-tenths, I should say.

Q. The effect, then, of putting the second book, and figuring its height, is to diminish the mean?

A. That increases the mean. Let's see; yes, sir, it would be to diminish the mean.

Q. Of course, it would diminish the mean?

A. Yes, sir.

Q. Now, the wider you consider these books and of the less height, the more that mean would be diminished?

A. Yes, sir; the more nearly it would approach the height of the small book.

Q. Or to state the same proposition differently, the narrower the high book is, the less the mean height?

A. Yes, sir.

Q. Have you got that height on the detached extension such as you described on the Oyster Bed and Cockspur Island training walls,—I mean the height on the center line,—the longitudinal center line?

A. I think that was shown; I am not certain about that; I think the height was shown along the center line in those two cases. I think I showed the height on the crest of
1517 the wall in the Cockspur Island training wall. The highest point is along on the center or on one side of the center, and that crest was shown on the compilation.

Q. And the crest was shown on the detached extension of the training wall?

A. I think I show that crest as the center line on Oyster Bed training wall, and on the other I did not show it as the center line.

Q. As to the detached extension, how does it appear,—as the crest or center line?

A. It appears as the center line, but that center line was only determined by soundings that actually came in the center, and that would not be as reliable as a profile constructed by means of the entire sections. Now, for instance, in one cross-section, you sometimes have eight or ten soundings, and sometimes only four. If I took ten soundings, it would give

me a better mean height than if I took the soundings that actually came in the center.

Q. The mean height is an imaginary height?

A. Yes, sir.

Q. I am talking about the height of the crest of the detached extension training wall?

A. No such thing as the crest. The mats were sunk and rock thrown as evenly over the mats as possible; no crest to it.

Q. There is one place, or one line along it that is higher than the others?

A. No, sir; there is not.

Q. Absolutely a horizontal surface?

A. Intended to be a flat surface. If there is one place higher than the other, it is purely accidental, but that is not true of the other two walls; they have a crest, but the breakwater has not as far as the present construction goes; it is supposed to be evenly distributed over the entire one hundred feet.

Q. Is it as a matter of fact?

1518 A. I think so. Of course, there are some places where it is badly torn up,—three or four hundred feet entirely destroyed, so that you could not say it was level, but it was intended to be.

Q. As a matter of fact, is it?

A. It is not.

Q. And yet you didn't plat the actual height?

A. To show the breakwater as it actually existed would have required a survey that would have taken nearly a month and it would have cost a great deal of money. I made this survey in one day, and showed it as near as I could; to show the actual height, would cost a great deal.

Q. You said yesterday that you saw the barges taking rock from the old quarantine station and putting it on the jetty; where did you see it loaded?

A. In one or two instances, I was present when it was loaded.

Q. How was it loaded?

A. On to the lighters by means of wheel barrows,—piled into the wheelbarrows and wheeled on to the lighters.

Q. The rock was lying there above low water?

A. The majority of it; I expect some of it might have been below low water.

Q. They didn't take any below low water?
A. They might have taken a few, but not many.
Q. Do you know where the harbor line runs on the old quarantine station,—the harbor line as established in 1893?
A. For the quarantine station?
Q. Yes?
A. I think it cuts into these piers about one hundred feet.
Q. How about in respect to low water,—runs along to low water?
A. A little above it I think; I may be mistaken about that.
Q. Can you tell from this chart?
A. I think so. On the ballast piles, it is above low water; at other points, it is outside of low water, and between 1519 that and Station Johnson, it is above low water.
Q. Where the ballast was, the harbor line is practically low water?
A. Practically where low water was before the ballast was placed there.

Re-Direct Examination by the Judge-Advocate.

Q. I understood you, in testimony heretofore given, that you had been in the employment of Capt. Carter several times?
A. I think I was recalled to his employment four times.
Q. When was the last time you returned for service under him?
A. In August, 1893.
Q. Did you make application for the position?
A. No, sir; I did not; I was at that time acting as city engineer of West Duluth, and Capt. Carter telegraphed me, and asked me if I would accept the position I held before on Savannah Harbor.
Q. Was that as a hydraulic engineer?
A. No, sir; I was serving as City engineer in West Duluth.
Q. I mean were you serving under him as a hydraulic engineer?
A. Yes, sir.
Q. Did he subject you to an examination such as Mr. Blair has gone through with this morning?
A. No, sir; he seemed very anxious for me to come back, and no questions were asked?

Q. You have made surveys under him since you were employed the last time?

A. Yes, sir; I have made several important surveys in the harbor.

Q. You have made estimates for him?

A. In a great many cases.

Q. He has adopted your estimates?

A. I think in all cases; there may have been some cases where he disregarded them.

Q. Something was said about the principal work being done by unskilled labor doing the work on the jetties; your duties would have been lighter if more intelligent and expensive labor had been employed, would they not?

A. I think they would.

Q. A large tunnel has been built under the Chicago River; which is the most important part of that work, drawing the plans and locating the tunnel, or the excavation of the tunnel itself?

A. I should think the construction of the tunnel would be the greatest; in fact, I know the Engineer who built it, and he said that work of that sort was enough to make a man gray haired in a few years.

Q. Did your experience in the field give you familiarity with the tidal flow, currents and erosion of mud?

A. Yes, sir.

Q. How would your qualifications on such subjects compare with those of a man who, for instance, might have drawn the original plans, but had nothing to do with the construction?

A. I think a man's best experience is that which he gets in the field,—better than drawing the plans.

Q. Where is the natural channel in that part of the River near the quarantine?

A. At what time.

Q. Is it on the line A. B C?

A. No, sir; that would have been the natural channel had it not been for the shoal which is right in the center of the river; the natural flow would probably have been a little to the north of A B C.

Q. There is a good, wide channel?

A. It is a little to the north of A B C.

Q. Then to abandon that channel and dig a new one across the shoal, and remove the only important structure in that vicinity, would require very serious reasons for so doing?

A. Yes, sir.

1521 Q. Did the project for improving Savannah Harbor adopted in 1890 provide for the purchasing or removing of the quarantine station?

A. I do not know of my own knowledge; I think it did.

Q. You haven't actual knowledge upon that point?

A. No, sir; I could not answer that.

Q. The records will show.

A. Yes, sir; I may be wrong.

Q. Did the new project of 1894; that is, the project involving the breakwater, involve any authority to purchase any part of the quarantine station or to pay for the removal at Government expense of that part of the quarantine station which was built before the harbor line was established?

Mr. Blair: I submit that the best evidence of that is the paper itself.

Judge-Advocate: If this witness, who is an engineer, can tell us, it will save me from introducing more documentary evidence.

Q. (Judge-Advocate continuing) Can you tell, Mr. Cooper?

A. I cannot.

Q. What were the dimensions of the barges that conveyed that quarantine rock?

A. One hundred feet long and about twenty-four or twenty-six feet wide.

Q. What was the average amount of rock delivered by each barge during that period?

A. I took the mean of all the lighters in April, and it was 122.

Q. 122 what?

A. Cubic yards, as the average on each lighter.

Q. Mr. Blair examined you as to the harbor lines of the quarantine station speaking in the present tense; are there any harbor lines at the quarantine station now?

Mr. Blair: I said harbor lines in 1892.

Judge-Advocate: I misunderstood you.

Q. (Continuing examination) Are there any lines now

1522 established at the quarantine station?

A. I don't know whether the Board of Engineers took any action on the quarantine station. I know the matter came up. I know there was a Board of Officers here to look into that matter, but the action they took, I don't know.

Re-Cross Examination by Mr. Blair.

Q. What specific cases did you ever make estimates for Capt. Carter in?

A. Here is one specific case right before you, where I made the estimate for that A B C channel.

Q. Any other?

A. I made the estimate of the dredging one time in the Marsh Island channel.

Q. When?

A. Sometime in 1894, I think.

Q. Any other?

A. I have made a number of estimates of the cost of surveys and estimates on the building of docks at different places.

Q. In this engineering district?

A. Yes, sir.

Q. What dock?

A. The Fort Pulaski and Fort Oglethorpe and also the dock at Tybee.

Q. Did you make estimates in any other cases?

A. I have made a number of estimates of the cost of certain jetties, a good many different jetties on Savannah Harbor.

Q. Did you ever make any estimate on mattress work?

A. I think so.

Q. Where?

A. As I said before, nearly all along the Harbor,—different jetties that were contemplated to be constructed.

Q. Cumberland Sound?

A. I don't remember making any estimates on Cumberland Sound.

1523 Q. When did you make your last estimate on mattress work?

A. I think it was when I was asked to give a rough estimate of the cost of Cockspur Island training wall.

Q. What year was that?

A. I think in the early part of 1894 or the latter part of 1893.

Q. What did you estimate the mattress work at?

A. I don't remember; I think my estimate of the cost of the entire training wall was half a million dollars.

Q. Can you give me the approximate figure you made as to the mattress work?

A. Somewhere in the neighborhood of 400,000 yards.

Q. How much a yard?

A. I didn't apply the prices; I only figured the quantities; Capt. Carter applied his own prices.

Q. You estimated the cost, didn't you?

A. At the contract price then in force, it would have been about half a million dollars, although I don't think I applied the price myself.

Q. Then you didn't estimate the cost?

A. Not actually; it was only the quantities upon which the cost was to be made.

Q. Is that statement true of these other estimates you have been talking about?

A. No; in case of the building of the wharf, I gave him the price.

Q. Did you estimate the cost of the mattress work in 1893?

A. Not the cost.

Q. In 1895?

A. No.

Q. In 1892?

A. No.

Q. In 1891?

A. I was not here in 1891.

Q. In 1890?

A. I wasn't here; yes, I was here a part of 1890.

1524 Q. In 1889?

A. I don't know whether I actually made an estimate of the cost of the mattresses then or not; it is possible that I did; I would not say one way or the other.

Q. So now you say you don't know whether you ever estimated the cost of mattress work at all since you have been in this engineering district?

A. I do not.

Q. What is your best recollection about that?

A. I say that my recollection is that my estimates were always in quantities and not in prices. I would give the number of square yards I thought necessary to construct a dam, and that opinion was made up by me from my personal knowledge of how many courses it would take to attain a certain height.

Q. And you say on this estimate you made in 1893, you estimated the quantity of the mattresses; about how much?
A. At somewhere between four hundred and five hundred thousand yards I think, for Cockspur wall.
Q. And the quantity of stone?
A. I don't remember; I could not say.
Q. (By the Judge-Advocate) Mr. Cooper, would like the notes of your testimony read to you?
A. No, sir.
Q. (By the Judge-Advocate) You are satisfied with it?
A. Yes, sir.
Witness excused.

1525 CHARLES S. HARDEE, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by the Judge-Advocate.

Q. Will you please state your full name?
A. Charles S. Hardee.
Q. You are City Treasurer?
A. Yes, sir.
Q. You are the custodian of certain vouchers which I have asked you to produce?
A. Yes, sir; all vouchers connected with the case.
Q. Did you bring them with you?
A. I have them, sir (handing Judge-Advocate the vouchers)
Q. What are these vouchers?
A. They are copies of receipts given to these various parties at the time they turned the money into the treasurer.
Q. Four of these are dated in 1889?
A. Yes, sir.
Q. And there are three dated in 1896?
A. Yes, sir.
Q. These are from the City records?
A. Yes, sir.
Judge-Advocate: I offer in evidence these three receipts given in 1896 and the four given in 1889.

* * * * *

1528 *Cross-Examination by Mr. Blair.*

Q. Those receipts show three different sales in 1896, —three different sales, do they not?

A. Yes, sir; three.

* * * * *

1538 Judge Advocate:—I now offer in evidence the certificate of incorporation of the Empire Construction Company.

Mr. Blair.—We do not see the materialty of this.

Judge Advocate:—The evidence will show it. I promise to connect it with the case.

(Here the Judge Advocate reads the certificate of Incorporation of the Empire Construction Company, with Benjamin D. Greene, Augustine M. Newton, James E. Chandler, John M. Waddle, and John A. Roebuck as incorporators, and also the certificates thereto attached.

Judge-Advocate:—That will be attached to the record and marked Exhibit 277.

Judge Advocate:—May it please the Court, I have intercepted an important witness in this case while absent from this station, Colonel Gillespie, he is not provided with his uniform, and will have to, necessarily, appear before the Court without uniform.

The President:—The Court will permit it.

Judge Advocate:—And that brings up a question which I had intended should be deferred until a later period, the question of the use by me of certain papers which were examined by a Board of Officers in an investigation which preceded this Court Martial and the case of the accused. In that behalf certain boxes were turned over to me as Judge Advocate of this Court and for use in the trial of this case, which were not opened until January 17th, last, when the boxes were opened in the presence of the accused and his counsel,

1539 after these preliminaries, which, at their request, I read to the Court, that they may be spread upon the record: (reading)

"Savannah, Georgia, January 17th., 1898.

Col. Thos. F. Barr,
Judge Advocate, G. C. M.,
Savannah, Ga.

Sir:—

The documents and papers which it is proposed you shall examine are strictly private memoranda to which neither the

Government of the United States nor any person has the legal right of access, save only upon my permission.

When I left Savannah last July, I committed them to the care and custody of my agent in that city. On my return I suffered the Board of Engineer Officers to examine them in confidence, coupled with the distinct condition that when such examination should have been completed they were to be returned to me.

Without my knowledge, and against my consent, they were sent from Savannah; and afterwards returned to this city, under seal of the War Department, addressed to the then Judge Advocate of the General Court Martial now in session here.

I have never consented to the taking of these papers from my possession; I have never parted with the property in them; and I do now protest against the proposed examination thereof, as a violation of my constitutional right to be protected against unreasonable searches and seizures.

Very respectfully,

Your obedient servant,

O. M. CARTER,

Captain U. S. Engineer Corps.'

Judge Advocate:—With my note, "received at 10-5 A. M. Jan. 17—1898, Thomas F. Barr, Ass't Judge Adv. Gen'l., U. S. A."

Judge Advocate:—This statement was then made by 1540 Mr. Blair, of counsel, (Reading):

Savannah, Ga., Jan. 17, 1898.

By Mr. Blair:—

On behalf of Captain Carter we protest against the presence of Major Adams during the examination of the papers of Captain Carter now sealed in the two boxes in the office of the Engineer in charge; his presence being in violation of the instructions as we understand them, given by the Secretary of War with respect to the opening of said boxes and the examination of the papers; those instructions being that said papers were to be examined by the Judge Advocate, including, of course, his assistant, in the presence of Captain Carter and his counsel, and in the presence of no other person."

Judge Advocate:—To which I responded, "I have received no instructions of the character mentioned by the counsel. Major Adams is in Savannah at my request, brought here for the purpose of assisting me in this examination, he having

been a member of the Board of Officers appointed to investigate the allegations preferred against Captain Carter, and being familiar with the contents of the two boxes which were before the Board with the consent of the accused, and which are now under seal in this office. I conceive myself vested with authority to authorize such Officers of the Army as I may require, who are here by authority of the Secretary of War, to assist me and to be present at this examination. My understanding of the instructions received by my predecessor touching this matter, is that no unauthorized person shall be permitted to be present."

Judge Advocate:—Does the Court care to go into this question today?

The President:—What is the time?

Judge Advocate:—20 minutes to three.

Judge Advocate:—I can go perhaps a certain distance and consume a little time.

The President:—The Court will take a recess for five minutes.

1541 Judge Advocate:—I can go on now for a few minutes and consume a little time before the issue is raised which I understand is to be raised.

Mr. Blair:—Yes.

Judge Advocate:—Shall I proceed and consume such time as I may?

The President:—I desire that you do so.

GEORGE L. GILLESPIE, a witness for the prosecution, duly sworn, testified as follows:—

Direct Examination.

Questions by the Judge Advocate.

Q. Please state your full name, Colonel?

A. George L. Gillespie.

Q. Your official position?

A. Colonel of Engineers, United States Army.

Q. You identify that paper, or the copy, you have had the original?

A. That is a copy of the original.

Q. Original of what?

A. Original instructions from the Chief of Engineers.

Q. And what is that (handing witness a paper)

A. That is the original letter.

Q. You were President of the Board appointed by the President?

A. I was, yes, sir.

Q. For the investigation of certain allegations made in relation to the accused officer here present?

1542 A. Yes, sir.

Q. Was the Board appointed by the Chief of Engineers or the Secretary of War?

A. It was a War Department order, I think, I am not sure about that. It was a printed order, general, I think it was the War Department.

Judge Advocate:—I offer in evidence and read: (reading)

"Office of the Chief of Engineers,
United States Army,
Washington, D. C., Sept. 13, 1897.

Col. George L. Gillespie,
Corps of Engineers, Army Building,
New York City, N. Y.

Colonel:

By direction of the Secretary of War, I transmit herewith, for the use of the Board convened by S. O. No. 32, c. s. from these Headquarters, copies of reports from Col. P. C. Hains, Corps of Engineers, Division Engineer of the S. E. Division and Captain Cassius E. Gillette, Corps of Engrs., in charge of Savannah River and Cumberland Sound District, in reference to certain work performed by contract under the direction of Capt. O. M. Carter, Corps of Engineers, at the Savannah River, Georgia, and Cumberland Sound, Fla.

The Sec. of War directs that the Board shall make as complete and careful investigation of this whole subject as is possible and submit a report thereon at the earliest practicable date.

1543 The Board is authorized to call upon Captain Gillette for such clerical aid, including a stenographer, as it may deem necessary, and to call before it for examination and information, such officers of the Corps of Engineers and such employees of the United States who have been engaged upon the works of improvement at Savannah, Cumberland Sound and other localities within the Savannah Engineering District, as it may deem necessary.

The expenses of the Board will be paid by Captain Gillette from the appropriations for works under his charge.

It is requested that a complete and exhaustive investigation shall be made and a detailed report with results and recommendations shall be submitted at the earliest practicable date.

Captain Gillette will be instructed to afford the Board every opportunity to examine the records of his office and to furnish it with copies of any portion of these records that may be desired.

The Board will give Captain Carter ample opportunity to be heard before it submits its report.

The Secretary of War deems it best that the duties of this Board shall take precedence of other work committed to its members.

Very respectfully,

JOHN M. WILSON,

Brig. Gen'l., Chief of Engineers, U. S. Army."

(Two Enclosures)

Judge Advocate:—I do not consider it necessary to read those enclosures which were simply for the guidance of the Board in its investigation. And that is as far as I can go with this witness this afternoon, without raising the issue 1544 which will take some little time.

The President:—The hour for adjournment has arrived, cannot we meet at ten o'clock tomorrow?

Judge Advocate:—No, sir, we cannot.

The President:—If there are no objections the Court will stand adjourned until tomorrow morning at eleven o'clock.

(Here at 2:55 o'clock the Court adjourned until tomorrow morning, February 15th, 1898, at eleven o'clock.)

THOMAS F. BARR,

Col. and Asst. Judge Adv. Gen.

Judge Advocate.

1545 United States Court Room,
Savannah, Georgia,
February 15, 1898.

The Court met pursuant to adjournment at 11 o'clock, A. M. Present.

All the members of the Court and the Judge-Advocate.

The accused, his counsel, and the reporter, G. T. Cann, were also present.

The President: The Court will come to order—all present.

GEORGE L. GILLESPIE, a witness for the prosecution, having been previously duly sworn, recalled, testified as follows:

Direct Examination, Continued.

Questions by the Judge-Advocate:

Q. Do you recognize that book?

A. I do.

Q. Was that before the Board of Officers, of which you were President, in the investigation of the charges against Capt. Carter?

A. It was.

Judge-Advocate: This letter book is marked, "B."

Q. Do you recognize that one? (Handing witness a book)

A. I do.

Judge-Advocate: This is marked, "Letters 4, Jan. 16, 1890, to March 16, 1891."

Q. Was that book before the Board of Officers, for examination?

1546 A It was.

Judge-Advocate: As a further mark of identification of the second book, at the request of counsel, it is marked, "Lieut. O. M. Carter, Private, January 16, 1890, to March 16, 1891."

Q. Do you recognize that book? (Handing book to witness)

A. I do.

Q. That was before the Board for the purpose of investigation?

A. It was.

Judge-Advocate: This book is marked on the back, "Let-

ters, March 18, 1891 to January 18, 1892," upon the side, "O. M. Carter, Corps of Engineers, U. S. A., March 18, 1891, to January 18, 1892."

Q. Do you identify that? (Handing witness book)

A. I do.

Q. That also was considered by the Board?

A. It was.

Judge-Advocate: This is marked on the back, "Letters, No. 1, August, 19, 1884 to September 29, 1886"; on the side, "August 19, 1884, to September 29, 1886, O. M. Carter, Corps of Engineers, U. S. A., Private."

Q. Do you identify this book? (Handing witness book)

A. I do.

Q. And that also was before your Board and there considered?

A. Yes, sir.

Judge-Advocate: This book is marked on the back, "No. 2, September 27, 1886, to September 23, 1888"; on the side, "September 27, 1886, to September 23, 1888, O. M. Carter, Corps of Engineers, U. S. A."

Q. Do you identify that book? (Handing witness a book)

A. I do.

Q. And that also was before your Board for consider-

1547 ation and examination?

A. It was.

Judge-Advocate: This book is marked, "Letters, 6, January 18, 1892, to January 6, 1893," on the side Capt. O. M. Carter, Personal."

Q. Do you recognize that one? (Handing book)

A. Yes, sir.

Q. Was that also before the Board for consideration?

A. It was.

Judge-Advocate: This book is marked, "Letters, 7, June 6, 1893 to November 25, 1895"; it is not marked on the side.

Q. Can you identify that one? (Handing book)

A. I do.

Q. And that also was before the Board?

A. It was.

Judge-Advocate: This book is marked on the back, "Letters 3, September 24, 1888 to January 16, 1890"; on the side, September 24, 1888, to January 16, 1890; Lieut. O. M. Carter, Private."

Q. Colonel, were all the letters copied into those books, official or private?

A. Partly official, purely so, partly private.
Q. Can you identify that book? (Handing book)
A. I, do, sir.
Q. That was before the Board for its consideration?
A. It was.
Q. Where did you obtain it?
A. The Board found it in the Government file case, turned over to it by Capt. Gillette, on its arrival here.
Q. How did the Board get into the case?
A. The case was found in the room that was said to be
1548 in the custody of the local officer.
Q. In what condition was it when you first saw it?
A. We found it screwed up in an open crate. The room was visited by the full Board, accompanied by Capt. Carter, the custodian was found there. The door was opened I think, by Capt. Gillette; he did not go inside; and on entering the room, the Government file case in question was pointed out to the Board, by Capt. Carter. There were a series of boxes there, marked "B 1 to 36." I think that is the identical number: I made a record of all the circumstances at the time, (Here the witness refers to a memorandum book), my record reads, "There were 36 boxes from B 1 to 36 in red letters."
Q. Those were file boxes in the case?
A. They were new boxes, apparently new, and the B stood for books.
Q. I refer now especially to the file case, how did you obtain access to it?
A. As soon as the file case was identified, I gave directions that the crating should be broken off, and afterwards I gave directions that the case should be transferred to the place that had been assigned to the Board for the conduct of its duties; and it was so transferred, under a force which was secured by Capt. Gillette at my request.
Q. Was the case locked?
A. The case was locked.
Q. How did you obtain access to it?
A. Capt. Carter gave me the key on the way from the place where it was stored to the engineer office.
Q. Where did he have the key?
A. He had it in his pocket and gave it to me personally.
Q. Was it a separate key, separate from other keys?
1549 A. That I have no distinct recollection about.
Judge-Advocate: I now offer in evidence. (To witness) This was found among those papers? (Handing witness a book)

A. After the case was opened, that was found in it.

Judge-Advocate: I now offer in evidence the Certificate Book of the Empire Construction Company.

Mr. Blair: To which we object, if the Court please.

Mr. Blair: If the Court please, we withdraw the objection to the introduction of the certificate book offered by the Judge-Advocate, and accompany the withdrawal by the statement that the book is not the private property of Capt. Carter, never was; he never had any knowledge of it, until;—never knew the book was in existence until this Board of Officers came down here, he didn't put it in the case.

Judge-Advocate: That savors much more like testimony than a statement to the Court; that it was there is plain, that it was found among his papers has been testified to: how it came there, is for him to explain, and that must be done by sworn testimony.

Mr. Blair: Unquestionably, Colonel, we intend to do that.

Judge-Advocate: I offer in evidence and read from this certificate book of the Empire Construction Company: (Here the Judge-Advocate reads from the stock certificate book of the Empire Construction Company all the certificates and stubs therein, in any degree filled out, together with all the indorsements thereon)

Judge-Advocate: That will accompany the record, and be marked Exhibit No. 278.

(The Judge-Advocate read from the above stated Exhibit as follows:)

Judge-Advocate: (Reading) Original ledger, folio 1, No. 1, name, Benjamin D. Green, shares 1,980, date, June 10, 1550 1891, No. 1, incorporated under the laws of the state of New York, 1,980 shares. This is to certify that Benjamin D. Green is entitled to 1,980 shares of the capital stock of The Empire Construction Company, transferable only on the books of the Company, in person or by attorney, only on the surrender of this certificate; New York, June 10th, 1891; James E. Candler, Secretary."

The name of the president is not affixed; it is marked, "Cancelled, B. D. Green, President." It is filled out on the back, "For value received, I hereby sell, transfer and assign to Neal McLaughlin, 100 shares, Thomas Reilly, 100 shares, W. W. Hegeman, 100 shares, and John F. Gaynor, 800 shares,."

Judge-Advocate: (Reading) Original ledger, folio 5, No. 2, name, Augustine M. Newton, shares 5, date June 10th, 1891." Then the form of certificate, "This is to certify that

Augustine M. Newton is entitled to 5 shares of the capital stock of the Empire Construction Company, transferable on the books of the company, in person ar by attorney, only on the surrender of this certificate." Signed, "James E. Candler, Secretary, New York, June 10th, 1891." The signature of the president is not attached. "Shares $25 each, which is marked upon each certificate."

Judge-Advocate: "Original ledger, folio 6, No. 3, James E. Chandler, shares 5, date June 10th, 1891, the Empire Construction Company. This is to certify that James E. Chandler is entitled to 5 shares of the capital stock of the Empire Construction Company, transferable, &c., New York, June 10th, 1891." Signed, "James E. Chandler, Secretary." The president's signature is not attached.

Judge-Advocate: "Original Ledger, folio 7, No. 4, name John M. Waddle, shares 5, date June 10th, 1891, No. 4 Empire Construction Company. This is to certify that John M. Waddle is entitled to 5 shares of the capital stock of the 1551 Empire Construction Company, transferable, &c. New York, June 10th, 1891; James E. Chandler, Secretary." The signature of the president is not attached. It is indorsed "For value received, I hereby sell, transfer and assign to Edward H. Gaynor, Five shares of stock, within mentioned, and authorize W. Pellingham to make the necessary transfer on the books of the Company. Witness my hand and seal, this 18th, day of December, 1891. John M. Waddle, in presence of W. Pellingham."

Judge-Advocate: "Original ledger, folio 8, No. 5, name, John A. Roebuck, 2 Wall St. N. Y., shares 5, date June 10th, 1891; the Empire Construction Company. This is to certify that John A. Roebuck is entitled to 5 shares of the capital stock of the Empire Construction Company, transferable, &c., Signed, "James E. Chandler, Secretary, New York, June 10th, 1891. B. D. Green President. Received the above described certificate, John A. Roebuck, June 10th, 1891." On the back "For value received I hereby sell, transfer and assign to John F. Gaynor 5 shares of stock within mentioned, and authorize to make the necessary transfer on the books of the Company. Witness my hand and seal this 30th, day of June, 1891, John A. Roebuck, in presence of James E. Chandler."

Judge-Advocate: "Original folio 9, No. 6, John F. Gaynor, shares 5, transferred from John A. Roebuck, date June 30th, 1891, No. 6, The Empire Construction Company. This is to certify that John F. Gaynor is entitled to 5 shares of

the capital stock of the Empire Construction Company, transferable, &c., New York, June 30th, 1891. Signed James E. Chandler, Secretary." The name of the president does not appear.

Judge-Advocate: "Original 5, transfer Number 7, folio 10, No. 7, name Ed. H. Gaynor, shares 5, transferred from John M. Waddle, date December 18th, 1891, No. 7, This is to cer-
tify that Edward H. Gaynor is entitled to five shares of
1552 the capital stock of the Empire Construction Company,
transferable on the books of the Company, &c. New York, Dec. 18th, 1891. James E. Chandler, Secretary." The name of the president does not appear.

Judge-Advocate: "Stock ledger 15, Folio 13, original No. 1, do 1, No. 8, Number of shares 100, to whom issued, Neal McLaughlin, dated September 10th, 1891, from whom transferred, Capt. B. D. Green. This certifies that Neal McLaughlin is the owner of 100 shares of the capital stock of The Empire Construction Company, transferrable, &c., 10th, day of September, 1891. James E. Chandler, Secretary." The name of the president does not appear.

Mr. Rose: Is not that mark cancelled across the face of it?

Judge-Advocate: Yes, that one is marked "Cancelled, B. D. Green, President."

Mr. Rose: And the others that were transferred are also marked cancelled?

Judge-Advocate: That is the second one, Mr. Rose, that has appeared having "cancelled" on it. The color of the certificate having changed, it was not so apparent.

Judge-Advocate: Stock ledger, folio 17, original No. 1, do 1, No. 9, number of shares 100, to whom issued, Thomas Reilly, dated September 10, 1891, from whom transferred, Cap. B. D. Green. This certifies that Thomas Reilly is the owner of 100 shares of the capital stock of The Empire Construction Company, transferable, &c., dated City of New York, this 10th. day of September, 1891. Signed James E. Chandler, Secretary." The name of the president does not appear. "Cancelled B. D. Green, President."

Judge-Advocate: Stock ledger, folio 21, original No. 1, do 1, number 10, number of shares 100, to whom issued, W. W.
Hegeman, dated Sept. 10th, 1891, from whom transferred,
1553 Cap. B. D. Green, This certifies that W. W. Hegeman
is the owner of 100 shares of the capital stock of the Empire Construction Company, transferable &c., City of New York, this 10th. day of September, 1891. James E. Chandler,

Secretary." The name of the president does not appear. And across the face of it, "Cancelled, B. D. Green, President."

Judge-Advocate: "Stock ledger, folio 9, original number 1, do, 1, No. 11, No. shares 800, to whom issued, John F. Gaynor, dated Sept. 10th, 1891, from whom transferred, Cap. B. D. Green, This certifies that Col. John F. Gaynor is the owner of 800 shares of the capital stock of The Empire Construction Company, transferable, &c., New York, this 10th. day of September, 1891. James E. Chandler, Secretary." The name of the president does not appear. It is marked across the face, "Cancelled, B. D. Greene, President."

Judge-Advocate: Upon the next certificate there appears no number of shares on the stub, and no name appears, and the certificate then reads as follows: "The Empire Construction Company, This certifies that..... is the owner of nineteen hundred and eighty shares of the capital stock of The Empire Construction Company, transferable only on the books of the corporation in person or by attorney, on surrender of this certificate. In witness whereof, the President and Secretary have hereunto subscribed their names and caused its corporate seal to be hereto affixed at ..... this ..... day of..... A. D. 189..... B. D. Greene President." The name of the secretary and the seal of the corporation does not appear. The certificate of transfer on the back is marked, "B. D. Greene", without any witness, just the signature, "B. D. Greene."

Judge-Advocate: That will accompany the record and be marked Exhibit 278.

1554 Q. What is that copy which I now show you, Colonel?

A. That is a copy of a letter, the original of which I have seen.

Q. The original was before the Board?

A. It was.

Q. Do you know what has become of that original?

A. I do not; the last time I saw it was in New York City, the morning the boxes were closed.

Q. Where was it then placed?

A. In the boxes, it was transmitted to the Judge-Advocate later.

Q. In the letter book?

A. In the file case.

Q. In the file case?—have you made a search for it in that file case since that?

A. I have.

Q. When was it?
A. Yesterday.
Q. With me?
A. Yes, sir.
Q. Did you make further search in other file cases?
A. I searched every file case that was presented to me.
Q. And the letter could not be found?
A. It could not be found, no sir.
Q. Who was that letter from?
A. B. D. Green.
Q. And to whom was it addressed?
A. Capt. Carter.

Judge-Advocate: I offer this copy in evidence.

Mr. Blair: We object, if the Court please.

Witness: I will correct my testimony in saying it was signed "B. D. Green", and say the letter was signed " B. D. G."

Q. Was there any index?

A. The index to the case showed it was "B. D. Green," 1555 Benjamin D. Green, I think was the exact way.

Mr. Blair: Have you got the index?

Mr. Rose: That must be in the file case.

Mr. Blair: If the Court please, in order that our objection may be more intelligible to the Court, I would like, with the permission of the Court, to cross-examine Col. Gillespie a little, to develop all the facts so far as he knows, them, about where and how those private papers were found. I think the Court will not have an intelligible view of this situation unless further facts are developed, and until they are, I can't make the statement to which the Judge-Advocate just now seemed to object.

Judge-Advocate: Any such statement in regard to a matter of that kind, was perfectly proper, and I am quite willing you should make one.

Mr. Blair: I submit it would conduce to a clear presentation of this case, if permission be given to me to cross examine Col. Gillespie.

The President: The paper is in possession of the prosecution, the presumption of law is that it is properly so, and of course, it rests upon counsel for the accused to show as he claims, that it is not in proper possession; to show that fact.

Judge-Advocate: If the issue is to be raised that these are not properly in my possession, the burden is with the accused to show it.

The President: Certainly,—with the accused to show it.

Judge-Advocate: He cannot show it by the cross-examination of a witness, which I have produced, for the simple purpose of identification.

Mr. Blair: This witness, if the Court please, has testified partially as to the facts concerning how he came into possession of these papers, and until his testimony is further
1556 developed, further explained, this Court does not know the facts in regard to it. I submit, it is a proper thing.

Judge-Advocate: Why not call him as a witness. You can call him as a witness to establish that fact.

Mr. Blair: I submit, I have the right to cross examine him on matters brought out on the direct examination.

Judge-Advocate: I have not got through with his examination. The cross examination comes after I get through with him.

By a member: I move the Court retire.

The President: The Court will retire.

Here the Court, at 11.45 A. M., retired to an adjoining room, for consultation, and the Court was closed. After which, at 12-5 o'clock, P. M., all the members of the Court being present,—the Judge-Advocate, the accused, his counsel, and the reporter, G. T. Cann, being also present, the Court was opened.

Judge-Advocate: May it please the Court, in the absence of the Court, during its deliberations, I sent to the file case, at the request of the accused and his counsel, and in the proper file case the original letter, which we had looked for so diligently, was found by the accused.

Mr. Rose: By Capt. Carter.

Judge-Advocate: Yes, by the accused; I make the correction; and it was among the letters, under "L", being smaller, was there inside, and necessarily, in such a search as we had to make, as the Court will understand, it was undersized and out of sight. I therefore, offer the original letter.

Q. Was that before your Board? (Handing witness letter)

Witness: That letter was before the Board.

Judge-Advocate: I offer the original of the letter now instead of the copy.

* * * * *

1580 Judge-Advocate: May it please the Court, I will premise my brief remarks with reading the protest, or request of the accused through his counsel, referred to by him in his opening statement; as follows:

"Savannah, Ga., Jan'y. 19, 1898.

"Col. Thos F. Barr,
Judge-Advocate,
General Court Martial.

"Sir:

I have the honor to request that you notify me when you propose to make any further examination of my private papers now in your possession, and that such examination or examinations, be made only in my presence and that of my counsel.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. U. S. Engineers,
By FRANK P. BLAIR,
His attorney."

1581 Judge-Advocate: And this response, (Reading)

"Savannah, Ga., January 19, 1898.

"Captain O. M. Carter,
Corps of Engineers, U. S. A.
Savannah, Ga.

"Sir:

I have the honor to acknowledge the receipt of your communication, by Mr. Blair of counsel, of this date, requesting me to notify you when I propose to make a further examination of your private papers, now in my possession, and that such examination or examinations be made only in your presence or that of your counsel, and to reply as follows: It will not be practicable for me to take the action you request for the reason that the papers which were withdrawn by me in the presence of yourself and counsel for consideration, can only be examined and considered from time to time whenever my other duties of preparation of the pending case against you will permit. I cannot, therefore, comply with either of your requests.

Very respectfully,
THOMAS F. BARR,
Asst. Judge-Adv. Gen. U. S. A. Judge-Advocate, G. C. M."

And I will state further, in making that examination, in the presence of counsel, I most carefully abstained from peering into any purely private and personal correspondence; I passed to the counsel for the accused papers for placing in a separate box, that in my judgment had no bearing upon this investigation, that could not become material and relevant in

this investigation. Nothing was withdrawn by me which, in my judgment, might not possibly have a bearing upon this case. They were placed in a box, locked in the pres-
1582 ence of the accused and his counsel, and have never since been unlocked by any person but myself. And further, that within a week, that for fully a week, the accused has had in his possession an order from the Secretary of War, giving to him possession of the box which contained what I thought was purely personal to himself.

* * * * *

1587 This is a letter which was yesterday identified by Col. Gillespie: (Reading)

"Savannah, Ga., September 21, 1897.

"Col. G. L Gillespie,
Major C. W. Raymond,
Major H. M. Adams.
Corps of Engineers.

"Sirs:

As soon as possible, after being advised of the charges against me, upon which the present examination is based, I obtained permission from the Chief of Engineers to return to Savannah, for the purpose of preparing for my defense. Prior to my departure I had sent to Savannah by Mr. Connolly a letter addressed to Mr. Sterly, my former Chief Clerk, and a man in whom I had unbounded confidence, and who was entrusted with many of my personal matters, requesting him to deliver to Mr. Connolly for me the key to my residence and also the key to a certain room in the Southern Bank Building, in which I had left wine cases, books, private and personal notes, letters and papers, and also private papers belonging to my father-in-law Mr. Westcott, whose business I have been transacting. "It was reported to me that Mr. Sterly delivered to Mr. Connolly the key to my residence, but declined to deliver to him the key to the room or to deliver the cases or their contents. I left New York on the 16th, and on the 17th, en route I wired the Chief of Engineers requesting permission to have access to the public records and to my private and professional notes and papers, in the presence of Capt. Gillette. On my arrival at
Savannah on the evening of the 17th, I found two
1588 telegrams awaiting me, both from the Chief of Engineers, the one granting my request, the second revoking this permission, the revocation being based, as I believe, upon representations made from Savannah. I have thus been deprived of the right to see my private papers or to take posses-

sion of my own property. * * * I have such confidence in the members of the Examining Board that I unreservedly place myself in your hands, and shall be glad to deliver to you the keys to the only case which I believe is locked, and I give you full authority privately to open it and examine all of its contents. If there be things therein which, in your judgment, need explanation, please request such, but as to those things of a private character, referred to herein, and which have no relation to my official duties, I respectfully request that they be turned over to me and that their contents be treated by you as confidential.

Very respectfully,

O. M. CARTER,
Capt. Corps of Engrs."

Judge-Advocate: I here omitted two or three paragraphs, a copy of the letter will be attached to the record and this letter will be submitted to the members of the Court for their inspection.

* * * * *

1593 The President: Counsel for the accused wish to be heard further?

Mr. Blair: No, sir.

The President: We will take that letter with us, if you please. (Here the letter is handed to the President)

Here at 1.40 o'clock P. M., the Court retires to an adjoining room for consultation, and the Court is closed. After which at 2.10 o'clock, P. M. the Court returning, all the members of the Court being present, and also the Judge-Advocate, the accused, his counsel, and the reporter, G. T. Cann, being present, the Court was opened, and the President announced:—

The President: The Court has decided not to sustain
1594 the objection.

Direct Examination Continued.

Questions by the Judge Advocate:

Q. How is that signed? (Handing witness the letter)
A. B. D. G.
Q. You are familiar with that "B. D. G."?
A. I have seen it many times.
Q. What in your judgment, does that stand for?
A. B. D. Greene, I suppose.

Judge-Advocate: B. D. Greene. I read this letter now:

"Hoffman House, Broadway, Madison Square.
New York, Oct. 25, 1888.

"Dear Carter:

Yours at hand. Could not do dredging as cheap as you say and work only 4 months in 2 years. Nobody can afford it. Craighill pays 16¢ at Richmond, where a dredge can be taken away to Phila. or N. Y. at small expense when the work is done. The block of marble is at B. S. & E's, and has been for two weeks. Mr. See says he can do nothing with a block of such irregular shape and quality. It is a hard looking specimen to send to a marble man. It has disgusted Mr. S. and he don't seem to care to have anything more to do with it. As John goes to Chili on Thursday, Nov. 1st, we can't very well handle the marble, even if it were good, which I doubt About 6 mos. from now $6,000,000 harbor work is coming up in Chile, and we have assurance of our ability to get it. We are now looking for a first class man to go with John as an expert. The first thing we shall tackle will be a tunnel 3,000 feet long and we can have as many millions R. R. work proper as we choose to take probably we shall go for about $4,000,000 contract; but John can tell better when 1595 he gets there. We have the preference, and John goes down on the ship with the general manager of the syndicate; so you see our show seems good. Now, I want to do up Chas'n, Savh., and Fernandina by July 18th, next, so that we can go down by that time, if not before. "This, I think, is the chance of our lives. Now let that dredging, so John and I can sell our stock, and hurry up the two works all you can, so we can get going by New Years. This is important. This Chile business is business, and I think within 90 days we will be into that tunnel. What do you think of this? Of course, the scheme which I outline when I first wrote you about Chile a month or more ago will be carried out, and a year hence will find us both struggling with the Spanish lingo. Of course, you don't want to say anything now to anybody about John's going away. He hates to go just before election, but it can't be helped. We are negotiating with O'Brien & Clark for their best Engineer to go down. Shall have to pay him $500 a month and expenses, but we must have a good man. He went up and fixed the West Point tunnel the other day for the West Shore R. R.

Put that dredging through on the basis of working only a

part of every other year, and no outside work, and you will see it is worth 18¢ to 19¢.

Yours truly,

B. D. G.

My address is 2 E. 15—St."

Here, at 2.15 o'clock P. M., Reporter G. T. Cann, was relieved by Reporter, W. O. Tarver.

1596 At this point, 2.15 p. m., in the proceedings of the day, Reporter Geo. T. Cann was relieved by Reporter W. O. Tarver.

Judge-Advocate: I do not find on the letter book of the accused the letter to which that was a response, within a reasonable time. The last letter copied in the book is a letter—

Mr. Blair: I think you will find the letter to which that one of Capt. Greene's is a response copied in the official letter book in the office.

Judge-Advocate: I propose to read this one.

* * * * *

1597 Judge-Advocate: I call the attention of the Court to the fact that the index under the letter "G" shows "B. D. Greene, 334, 415, 434 and 518."

Mr. Rose: I would like to call the attention of the Court at the same time to the fact that "518" is not in the same hand-writing, and was not put in by Capt. Carter, as I am informed.

Judge-Advocate: I offer the letter, and ask the Court's judgment upon it in relation to this case.

The Court: The Court will retire.

The members of the Court then, at 2.30 p. m. withdrew to an adjoining room, and the Court was closed. After which, at 2.50, p. m, the members of the Court resuming their seats, the Court was opened, and the President, in the presence of the accused, his counsel, the Judge-Advocate and the Reporter, announced:

The Court has decided not to sustain the objection.

1598 Judge-Advocate: I do not know that I shall have time to read that letter.

The Court: That will necessitate an adjournment then.

A Member: I move that we adjourn until tomorrow morning at eleven o'clock.

The Court: If there are no objections, the Court will stand adjourned until tomorrow morning at 11.00 o'clock a. m.

(Court adjourned at 2.50 p. m.)

THOMAS F. BARR
Col. & Asst. Judge Adv. Genl.
Judge Advocate.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

United States of America
vs.
Oberlin M. Carter *et al.*
} In Equity No. 25980

Appealed April 28, 1908 to U. S. Circuit Court of Appeals for Seventh Judicial Circuit.

Identified as Volume 4 of Transcript of record on appeal.

Dated, Chicago, Illinois, this 11th day of September, A. D. 1908.

H. S. STODDARD,
Clerk.

(Seal)

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

United States of America
vs.
Oberlin M. Carter *et al.*

} Appeal No. 1534 and Cross-Appeal No. 1535 at Oct. Term 1908.

Appealed May 26, 1909, to the Supreme Court of the United States. Identified as Volume 4 of Transcript of Record on Appeal.

Dated, Chicago, Illinois, this 12th day of June, A. D. 1909.

EDWARD M. HOLLOWAY,
Clerk U. S. C. C. of Appeals.

(Seal)

VOL. 5

TRANSCRIPT OF RECORD.

(Volume 5 of record includes testimony in Vols. 8, 9, 10 and 11 of original Court Martial record.)

Pages 2117 to 2687.

IN THE

Supreme Court of the United States

No.

THE UNITED STATES OF AMERICA,

Appellants,

vs.

OBERLIN M. CARTER, LORENZO D. CARTER, I. STANTON CARTER, HORACE G. STONE, NATHANIEL C. SEARS, THE INTERNATIONAL AUDIT COMPANY, ROBERT NELSON, AND LYMAN E. COOLEY,

Appellees.

Appeal from the Circuit Court of Appeals of the United States for the Seventh Circuit.

1599. United States Court Room,

Savannah, Georgia,

February 16, 1898.

Court met pursuant to its adjournment of yesterday at eleven o'clock a. m.

Present:

All the members of the Court and the Judge-Advocate. The accused, his Counsel and the Reporter, W. O. Tarver, were also present.

The President: Court will come to order.

GEORGE L. GILLESPIE, a witness for the prosecution, previously sworn, resumed the stand.

Judge-Advocate: I read a letter which was ruled upon by the Court as admissible yesterday:

"September 23 8.

"Dear Captain:

"There may be some delay in getting out specifications for works, as everything goes to Craighill who is away a great part of the time. Will send as soon as they are out. I send you a clipping about the Ashland Bridge. A paving Co. has just been organized here that I can get 50 shares in."

Judge-Advocate: It then goes on to name the share-holders, which I think immaterial, unless Counsel desire it. (Continues to read letter as follows:)

"The scheme is this: The Vulcanite Co., of N. J., controls patents for sheet pavement similar, and in fact exactly the same as the new vulcanite or coal tar distillate pavement used in Washington. This Company in Savannah gets from this Vulcanite Co. the exclusive right to lay said pavement in S. C., N. C., Ga., Fla., Ala., Miss., Tenn., La. and Tex. The Vulcanite Co. agrees further to sell to the Savannah Co.

asphalt and other materials at cost and to furnish expert
1600 labor when wanted at cost. The Savannah Co. gives
the Vulcanite Co. 50 shares of its stock and a royalty of 15¢ per square yard for each yard of pavement laid. The Savannah Co. already have a contract here for 48,000 square yards of paving, and will get another one soon (about January) for 50,000 more. At the present prices there is a profit in the 48,000 yards of about $21,000 after paying royalty &c.,—or within $4,000 of enough to pay back the original amount put in. I think it is a good thing, but dont like the clause agreeing to buy asphalt &c. from the Vulcanite Co. at cost, as that is too indefinite and may increase so as to eventually eat up the profits of the local Company. The contract with the City of Savannah is at $2.35 per yard. A clause in the agreement prohibits calling for more than fifty per cent. of stock subscribed. I have nothing to invest just now, as my money is tied up at home in Ohio, but I thought you and John might like to take $1250 or $2500 worth of stock (25 or 50 shares). The money is to be paid in at once,—a call has already been made, and work begun by October 15th to Nov. 1st.

"A contract for stone has been made with the Central Railroad at $1.70 per ton of 2240 crushed delivered in City. I shall look into the matter fully, as I really think there is a good deal of money in it for the amount invested. At any rate the Company is composed of good men who are in good faith. I only have a few days to decide, as the Company must have all its money paid in soon and if I don't take the stock it has been offered to men here. Let me know if you wish to venture in it.

"By the way I think you can get the C. R. R. to agree to deliver from 500 to 1,000 tons granite at their wharves daily at from $1.50 to $1.70 per ton of 2240 lbs.—perhaps less. I had the block of marble shipped to Evans and wrote him to send it up to Batterson, Lee & Eisele.

"I sincerely hope the Chili scheme is not a paper one only. It looks too bright to last. Fever is awful in Florida and I
fear it is in Fernda. Backman, the dentist, wanted me
1601 to speak to you about his rooms. He wants you to take
the ones you used to have once more. Don't fail to let me know definitely about your wishes in the matter of the Paving Co., as I must decide and pay in the boodle if I come

in. It is hot and sultry here, but I know you are having charming weather.

"With kind regards,

"Yours truly,

"O. M. CARTER."

A copy of the letter of Sept. 21, 1897, of the accused to the Board of Officers, which I read to the Court yesterday, and a part of which I omitted to read, will be attached to the record marked Exhibit No. 279.

Direct Examination of the Witness by the Judge-Advocate.

Q. Do you know John F. Gaynor?

A. I do.

Q. Did he appear before the Board of Officers, of which you were President, as a witness?

A. He did at one of the sessions in New York City.

Q. Did the question of the ownership of the Empire Construction Co. and the Atlantic Contracting Co. come up for consideration in his examination?

A. He was examined on the subject of both companies and their organization.

Q. What did he state in relation to their relation to each other?

Mr. Blair: May it please the Court, I object. Col. Gaynor is living. He can be called and put on his oath, and he can then be cross examined by the accused. The statement which Col. Gaynor made, or is supposed to have made, before this Board was not under oath, and we submit that it cannot properly bind this accused in any way.

Judge-Advocate: I submit that the declaration of any of these persons named in the indictment which you are passing upon is competent evidence,—declaration made by them
1602 either under oath or without oath; that a prima facie conspiracy has been established before the Court here involving John F. Gaynor, and any declaration he may have made subsequent to that time is admissible and competent evidence.

The Court: The Court will retire.

The members of the Court then, at 11.11 a. m., withdrew to an adjoining room, and the Court was closed; after which,

at 11.15 a. m., the members of the Court resuming their seats, the Court was opened, and the President, in the presence of the accused, his counsel and the reporter, announced:

The objection of the accused is not sustained.

Judge-Advocate: (Addressing witness) Please answer the question.

A. I asked him if yhe knew of the existence of the Empire Construction Co., and he said he did; that it was organized to do work in Orange, N. J.; that it performed the contract there under the general conduct of Mr. Newton, who I think he said was General Manager and one of the stockholders, and that, on the completion of that contract, the Company went out of existence. He was next asked if the membership of the Atlantic Constructing Co. was not the same as that of the Empire Construction Co. with a different name. He said, practically in terms, that Newton was not a member of the Atlantic Constructing Co. He was next asked why the Empire Construction Co. went out of existence. His statement was that, in the execution of their contract in Orange, N. J., they got into embarrassments which resulted in law suits, and, in fact, they were in bad odor in the community, and found it advisable to go out of existence as soon as possible.

Q. As to the ownership other than Mr. Newton?

A. His testimony was to the effect that he was an owner, but he gave no other names.

Q. Now, as to the relation or succession of the At-
1603 lantic Contracting Company to the Empire Construction Company?

A. He was asked a question as to the interval of time between the death of one company and the birth of the other. He replied, in terms, that he didn't know; that the information would be found in the Savanah office, as they had to produce their papers of incorporation of the new company.

Q. That is of the Atlantic Contracting Co.?

A. The Atlantic Contracting Co.

Q. Was any other witness, before your Board, examined as to ownership in the two companies?

A. I think not.

Cross-Examination by Mr. Blair.

Q. You testified yesterday, in substance, that when the Board met here, you went with Capt. Gillette and Capt. Carter to a room in the Southern Bank, where was stored this file case containing these papers and other matters belonging to Capt. Carter; you stated, I believe, that there were boxes numbered from B1 to B36,—is that right?

A. Yes, sir.

Q. Was there anything else besides these boxes and the file case in question in that room?

A. There were three or four boxes marked W, which Capt. Carter said was wine; one box marked G, which he said contained a gun, and one box marked T, which contained a tent. Besides these boxes, there was nothing but the file case.

Q. You said there was a custodian there; who was it, do you know?

A. I don't know his name.

Q. An employe of the Engineer Office under Captain Gillette?

A. Said to be; yes, sir.

Q. He took his orders from Capt. Gillette at that time, didn't he?

A. Yes, sir.

Q. You said that box was uncrated, that the crate
1604 was taken off the box before it was moved out of the room in the Southern Bank Building?

A. I found it contained in an open crate.

Q. By whom was that crate taken off?

A. By my orders, by this janitor and a colored man.

Q. By this custodian who was there?

A. Yes; a white man and a colored man.

Q. Then you stated that, on your way over, Capt. Carter gave you the key to the box,—to the crate?

A. Yes, sir.

Q. He had previously given you a letter which was read here yesterday, had he not?

A. He gave me that letter immediately on the organization of the Board.

Q. That was 10.00 o'clock in the morning of the 21st of September, 1897, was it not?—the organization of the Board, —or thereabouts.

A. No, sir; somewhere about noon; I think between twelve and one o'clock.

Q. In what room did you organize?
A. In the private office of Capt. Gillette.
Q. And then you proceeded to the place where the boxes and the crate were, and prior to leaving the room of organization that morning, or that noon, you received the letter in question from Capt. Carter?
A. I had better state the circumstances under which that letter was delivered.
Q. No.
A. If you want to find out the date—
Q. If you please, I would like to know whether you received that letter prior to going over to the room where the crate and boxes were?
A. The letter was received immediately after the organization of the Board.
1605 Q. And that was prior to your going over to the room in the Southern Bank Building where the articles in question were?
A. Yes, sir; immediately prior.
Q. The Judge Advocate stated yesterday that you received those papers in the crate by virtue of the letter which Capt. Carter had delivered to you?
Judge-Advocate: I don't think I so stated, Mr. Blair.
Q. (Mr. Blair continuing) By what authority then did you take and examine these papers in the crate,—in the file case?
A. A few days before I left New York for Savannah,—I think on the evening of the 17th,—I received a telegram from the Chief of Engineers, notifying me that Capt. Gillette had been directed to turn this property over to the Board on its arrival in Savannah.
Q. Have you that telegram?
A. It is in New York City, unless it is here. I didn't expect to appear here, consequently I brought no papers with me.
Q. Had you ever seen a copy of the telegram sent to Capt. Gillette in that behalf?
A. I have not.
Q. Did you bring the telegram which you received from the Chief of Engineers, as you have stated, down with you on the 21st of September?
A. I did.
Q. It was here?
Q. It was here?

Q. Did you exhibit that to Capt. Carter?
A. I have no remembrance of having done so.
Q. Did you make any answer in writing to the letter of Capt. Carter to you authorizing you to examine the papers?
A. I did not.
Q. No reply in writing?
A. I think not.
1606 Q. What became of the articles that were in that room, so far as you know?
A. The file case?
Q. All of the articles which you saw in that room in the custody or charge of the custodian when you entered?
A. Let me understand you; the articles that were left in the room or the file case?
Q. All the articles left in that room, so far as you know?
A. Capt. Carter gave me a supposed index of the contents of these boxes marked B-1 to B-36, and, on examination, I found it an incomplete index, and, on the statement of the man who is said to have packed these boxes,—I took his word for it,—that they contained nothing but official books, they were examined or two of them were and found to contain printed books, and I concluded that it was a matter which I could turn over to Capt. Carter, which I did; what he did with it, I don't know.
Q. B-1 to B-36 you turned over to Capt. Carter?
A. I don't know that I did, consecutively; Nos. 29 and 31 the index indicated might also contain some matter of information,—I do not know what boxes; I don't recall the numbers,—but I had these two boxes brought over to the office and opened, and the articles taken out, and they were found not to contain what we supposed. There were only two of the boxes of that series that were opened, and the lids were put back on the boxes and screwed down, and the boxes returned.
Q. What did those boxes contain?
A. So far as I know, nothing but printed books.
Q. In reference to the cases marked W?
A. They were not opened at all.
Q. They were turned back to Capt. Carter?
A. They were left where they were, and turned over to him.
Q. And the other case marked E, if you know?
A. I don't know of any such.

Q. T and G.?

1607 A. T and G were left in the same condition as the other boxes of B.

Q. Then you had a file case, as you say, over to the Engineer Office. Who went with you into that room?

A. Which room?

Q. The Engineer's Office?

A. Major Raymond and myself, and Capt. Carter I think,—I am not sure,—I don't know of any one else.

Q. Major Adams?

A. Major Adams did not at that time; he was not present.

Q. Who was present when the file case was opened?

A. The Board only; Major Adams, Major Raymond and myself.

Q. Are you positive of that?

A. I think I am.

Q. Well, immediately after the file case was opened, who were present besides the three named?

A. I don't remember.

Q. Within say a half an hour from the time the file case was opened, is it not true that there were present in the room, besides the three members of the Board, Capt. Carter, Capt. Gillette, and the clerk Sterly?

A. Capt. Gillette made a statement at some time, I cannot remember now when,—that that file case contained certain papers that belonged to the office file. I told him then if that was true, he should go into his office and write a statement to that effect to me, which he did, and whether Sterly came in and brought that paper or not, I do not remember, but Sterly was never there at any time during the whole time that case was in the office; he had nothing whatever to do with it.

Q. Was Capt. Carter in that room at any time, just at the opening of the file case, or immediately thereafter?

A. I don't think he was. There was no reason why he should be there, and I don't think he was there.

Q. Is not this about true: that at one time,—at some

1608 time,—say just at the opening of the file case, or immediately thereafter, some statement was made by Sterly, or by Capt. Gillette to Sterly, in the presence of Capt. Carter, that certain evidence was in that file case throwing light upon this case, and then is it not true that Sterly was asked in what that evidence was contained, and he took from the file case certain letter press books?

A. Sterly never approached the file case the whole time it was open.

Q. Did Sterly, under any circumstances similar to those I have detailed, point out any portion of the contents of that file case to the members of the Board?

A. I think he identified one book which had no number to it.

Q. And what was that book, if you remember?

A. I think that, after the books were taken out, that there was one book which he said was marked B,—I am not certain, but I think it was,—and that book was identified as containing certain information essential to the case.

Q. How soon was that after the file case was opened?

A. That I do not remember.

Q. Who was present when Sterly identified this book?

A. I know of no one except the members of the Board, and Capt. Carter possibly.

Q. Capt. Gillette?

A. He may have been there; he was not there all the time.

Q. This, of course, was in the room where the file case was open?

A. Yes, sir.

Q. How long did Sterly remain in that room?

A. A very short while; not two minutes, I think.

Q. Was he called in for the purpose of identifying any of these books and papers, or was this identification made while he remained in there from the time the case was opened?

A. As I remember, he was simply called in to identify the particular book to which I referred when I asked Capt. Gillette to make his statement in writing. That was the only time
1609 he was called in to identify any paper contained in that case.

Q. Was that after Capt. Gillette made his statement in writing that certain books in there properly belonged to the official files of the Engineer Office?

A. To my remembrance, it was.

Q. When, with respect to the moment the file case was opened,—when did Capt. Gillette make that written statement?

A. My impression was that Capt. Gillette made that statement before the file case was opened.

Q. Did he advise you at the time he made that state-

ment how he became possessed of the information of the character indicated?

A. He simply, as I remember it, stated to me that Sterly had told him. That is all I remember about it.

Q. Did he state anything more that Sterly had told him with reference to the contents of the file case?

A. I don't remember that he did.

Q. Only that there were files in there that properly belonged to the Engineer's Office?

A. And a private memorandum with reference to matters that he and Capt. Carter alone knew.

Q. A private memorandum with reference to Capt. Carter's affairs?

A. Yes, sir.

Q. Capt. Gillette, then, as I understand you, told you that Sterly had given him that information?

A. Yes, sir.

Q. Now, at that time, did Capt. Gillette, in writing, indicate in addition to the official matter, or matter properly belonging to the office of the Engineer of this District,—did he in that writing indicate to you that there were other matters tending, perhaps, to implicate Capt. Carter?

A. I do not remember that he did.

Q. Was Sterly at that time asked to indicate the other matter non-official?

1610 A. What other matter?

Q. Supposed to be in that file case?

A. That was only a general statement from Sterly to Capt. Gillette that that case contained matters, and, on that statement, I got the particular letter.

Q. Did Sterly when he came in and picked out the book B, —did he at that time indicate any of the other matter bearing upon Capt. Carter's case?

A. He didn't pick out any book; he didn't put his hand on any book; he only indicated a book, and when that was over, he was dismissed; that was the only service he was there for.

Q. What became of the contents of that file case, I mean after you gentlemen had examined it down here, and completed your labors here, what became of the contents of that file case?

A. The two boxes were brought over from this room,— empty boxes—

Q. Room in the Southern Bank Building?

A. Southern Bank Building.—Which contained nothing at all; apparently empty boxes.

Q. B-29 and 31?

A. I think those are the numbers. They were brought over, and, under the direct supervision of Maj. Raymond and myself, all that was in that file case was packed absolutely, and Capt. Carter was notified.

Q. Who did the manual labor in packing those things from the file case in the two boxes?

A. A colored man.

Q. Was anyone else present besides you three gentlemen?

A. No, sir.

Q. Now is that true of all the contents of the file case?

A. Yes, sir; everything.

Q. Didn't you turn back some of the contents of the file case to Capt. Carter?

A. No, sir; not at that time.

1611 Q. Were they sealed then your presence?

A. They were screwed down and sealed with wax, and sealed in such a way that they could not be opened again without our knowledge.

Q. Then what became of the two boxes?

A. They were sent by express to my address in New York City.

Q. Your office?

A. My own office in New York City.

Q. In the Army Building, New York.

A. Yes, sir.

Q. The Engineer office there?

A. Yes, sir.

Q. Now, when were those boxes next opened?

A. I could not say definitely.

Q. Do you remember the circumstance of their being opened, without attempting to give the date?

A. They were opened by the Board.

Q. Some servant performing the manual labor of opening them?

A. One of the clerks in Maj. Adams' office.

Q. Go back a moment; while the papers were here in Savannah, did Capt. Carter have access to them at any time?

A. He had perfect liberty to examine them in the presence of the Board, and was so notified repeatedly.

Q. And at no other time, of course?

A. No other time, because they were in my custody.

Q. It is true, is it not, that Capt. Carter was excluded from the examination begun by you on the 21st of September?

A. Excluded.

Q. Did you not ask him to retire after the case was opened, or about that time?

A. I did.

Q. When did you next invite him into the room, or give him permission to examine these private papers?

1612 A. I think the next day when the session of the Board began, with a stenographer. He was given permission to examine them any time he chose in the beginning of the session.

Q. Was that in the session of the Board?

A. In session of the Board.

Q. In the presence of the other members?

A. In the presence of the other members.

Q. Now, coming back to New York, you say you remember the circumstance of the boxes being opened there?

A. I do not remember the particular circumstances; they were under my custody, and we were at perfect liberty to open them at any time.

Q. You saw them opened?

A. Yes, sir.

Q. The seals were broken on your presence?

A. Yes, sir.

Q. Then you made a further examination,—I mean the members of the Board?

A. Yes, sir.

Q. Now, in the examinations in New York City, were all of the examinations that were made, made in the presence of all the members of the Board?

A. No; that was not possible, because Major Adams and myself were examining these matters while Maj. Raymond was away. Maj. Raymond's station was in Philadelphia, and he was necessarily away, but the examination was made with no other persons present except Capt. Carter.

Q. About what time of the day were the papers shipped from Savannah to New York, if you remember, approximately?

A. They were shipped Friday night. We left on Saturday. Friday night, September 24th.

Q. They were shipped on the 24th, Friday, and
1613 probably were not opened until Monday?

A. I could not tell when they were opened. I left here Saturday noon, and reached New York Sunday night, and was in my office Monday.

Q. They were not opened before Monday then?

A. No, sir.

Q. Capt. Carter was not notified of your intention to ship them away from here?

A. It was not necessary to notify him.

Q. As a matter of fact, he was not, was he?

A. I met him in the lobby of the hotel Saturday morning and I told him I had shipped them the night before, and those boxes contained absolutely all that the file case contained.

Q. Then he was not notified Friday that they were to be shipped?

A. No, he was not; the property was not in his hands.

Q. You say in New York, at times examinations were made when Maj. Raymond was not present; who else was present at any of those examinations besides Maj. Adams and yourself?

A. No one, unless Capt. Carter himself.

Q. Then you completed your report about the 21st, did you not,—No; about the 11th of November, was it not?

A. I could not tell you the date; it was sometime in October or November.

Q. When you completed your report, where were the boxes?

A. In the same place where they had been from the beginning; in Major Adams' office.

Q. That is next to your office?

A. Yes, sir; on the same floor.

Q. And how long did they remain there?

A. Only three or four days after the report was submitted.

Q. Where did they go then?

A. They had been sealed previously; as soon as the
1614 Board made its report, the boxes were sealed again, and kept in store in Major Adams' office, and four or five days subsequently, they were turned over in that condition to Col. Clous.

Q. You testified yesterday that a copy was made of a

letter signed B. D. Greene, or B. D. G., and you identified that letter, that being a letter sent supposedly by Capt. Greene to Capt. Carter; that is right, is it not?

A. Yes, sir.

Q. You identified that letter as having been written,—the letter of which yours was a copy,—as having been written by B. D. Green because the index of the case showed that it was B. D. Greene,—Benjamin D. Greene,—I think that was the exact wording; will you find the index? This (handing witness file of papers) is the file referred to, I believe?

A. Possibly I may have been mistaken; that was my testimony I know. I do not see any index there.

Q. There is no index?

A. I do not see any there.

Q. It is arranged alphabetically, with leaves stamped with the various letters of the alphabet?

A. Yes, sir.

Q. The letter which was read this morning, beginning on page 518 of this letter book, and which you identified yesterday as having been written by Capt. Carter, is the copy which you have in your hand, is it not?

A. This is a letter press copy of the original letter.

Q. To whom is that addressed?

A. It has "Dear Captain" on it.

Q. No other name of the addressee?

A. Not in this place.

Q. Now, turn to the index, kindly, will you; under the head of "G", you find on that page, "Greene, B. D."; that is right, is it not?

1615 A. Yes, sir.

Q. And opposite that, you find the figures, "333, 415, 434" in ink?

A. Yes, sir.

Q. And the figures "518" in pencil?

A. That is true.

Q. Who wrote the figures "518"?

A. I have no knowledge at this time; I may have done it myself.

Q. Is it not true that you did do it?

A. I could not swear to that.

Q. They are not in the same handwriting as the figures in ink, are they?

A. No, sir; not at all.

Q. And you think you may have done so yourself?

A. I may have done so.

Q. The copy of the letter, the original of which was read in evidence yesterday, which was signed with the initials "B. D. G" which you identified,—the copy you identified?

A. Yes, sir.

Q. You did not say how you knew it to be a copy,—a true copy?

A. Why could I testify that it was a copy?

Q. Yes; how do you know it is a true copy?

A. Simply because I had read the original a number of times, and in reading that, I knew they were practically the same.

Q. Who made the copy, if you know?

A. I would have to look at that first if it is here. (Counsel handed witness the paper) I think that was made by my own typewriter

Q. In your own office?

A. Yes, sir.

Q. When?

A. That I could not say; sometime during the investigation, but I could not say when.

Q. Before the report was made up?

A. Yes, sir.

1616 Q. What other letters, if any, were copied at that time?

A. Quite a number.

Q. Did you compare them with the type-writer?

A. Not individually.

Q. You did not personally type-write the letter?

A. I did not.

Q. Nor any of them?

A. No.

Q. Nor did Maj. Raymond nor did Maj. Adams?

A. No.

Q. They were done by a clerk or clerks?

A. Yes, sir.

Q. Did you compare them,—you or any member of the Board, to your knowledge,—compare the copies with the original at or about the time they were made?

A. No, sir.

Q. So that your testimony with respect to their being,—any one of them being a true copy, would be merely from your recollection of the original, having read that, and then at a subsequent time read the copy?

A. And my confidence in the type-writer himself.

Q. You said there were a number of others; what others were copied as nearly as you can recollect,—all the Greene letters?

A. I think so.

Q. And were the letters to Capt. Greene by Capt. Carter copied out of the letter press copy books?

A. I think they were.

Q. About how many, in all, of those copies were made, if you can remember?

A. I think not to exceed ten or twelve.

Q. In whose possession did those copies remain after they were made?

A. Kept in the safe by Maj. Adams.

Q. Until what time?

1617 A. I cannot say definitely; it was after the report was made.

Q. How long after the report?

A. That I could not say.

Q. Is it not true that they remained there until quite recently?

A. Probably they did; I cannot say definitely; I have no recollection of that point at all.

Q. You consulted yesterday a memorandum book, and testified from the entries made therein; what is that memorandum book?

A. It is a memorandum book of the Division Engineer of the Northeast Division; I am the Division Engineer.

Q. It must have some reference to these matters?

A. No; it is a book I take with me as Division Engineer of my Division, and I record everything I see in respect to the works under the charge of officers who constitute my Division, and coming down here, I used the memorandum book to record things, as they occurred.

Q. And in that, you have a memorandum concerning some of these paper

A. Yes, sir; up to the time the Board closed.

Q. A memorandum of the contents of the file case?

A. I didn't take that; it was simply a history of the Board's operations during the time it was here.

Q. I noticed you look at it before you identified either one of these books or the letter of Capt. Greene?

A. Yes, sir.

Q. What memorandum did you consult then?

A. In the examination of these papers, such letters as seemed pertinent to our inquiry were noted in my book,—the number of the book and the page put down.

Q. That you retained with you?

A. That I retained,—Yes, sir.

Q. After you completed the examination of the papers in New York, or during your examination of the papers in New York, did you make any disposition of any of the pa-
1618 pers; I mean, did you return any to Capt. Carter?

A. I did.

Q. By authority of the Secretary of War?

A. At the request of Capt. Carter himself.

Q. And you separated, then, some of these papers?

A. They were in a separate paper of themselves; I only transferred one package of papers.

Q. There were a great many packages of papers?

A. This was one particular package of papers which he said contained information with regard to a special subject, which I had never opened nor any member of the Board.

Q. Letters of condolence?

A. He said they were.

Q. And that, and that alone, you returned?

A. Yes, sir.

Q. Then you sealed the boxes, and subsequently they passed into the possession of Col. Clous, still sealed?

A. Yes, sir.

Q. I would like to ask this question: During the time those papers were in New York in your office, or the office of Maj. Adams, did any person have access to the boxes, or their contents, or either of them, save the three members of the Board and the typewriters whom you have mentioned, and Capt. Carter?

A. The typewriters only saw the papers that were submitted to them. The contents of the boxes were not known to anybody except the Board; no one had access to the boxes at all, and the only case in which any matter, to my knowledge, was given over to any other person, was when it became necessary for me to identify Capt. Carter's presence at certain points outside of his District; I turned a few of those small diary books over to Capt. Gillette, which contained the dates that Capt. Carter was at certain points.

Q. Did you examine those diaries sufficiently to know that that was all they contained?

A. I ran through them, and it seemed to me that it
1619 was nothing but a diary—

Q. Of what year?

A. I think 1893, 1894, 1895 and 1896; but I think I only gave him 1893 or 1894 of them; he hadn't the whole series; it was only for one particular year, and my recollection now is that it was the year 1895.

Q. Did you hand him anything alse to look at?

A. Nothing at all; he never saw any other paper, to my knowledge.

Q. This is the book B, which you spoke of as having been pointed out by Sterly?

A. Yes, sir; this is the book.

Q. Turn to page 10, if you please; at the bottom of the page you will find, "Copied here by direction of Capt. C,—Why?" in blue pencil; do you know the handwriting there?

A. I do not know that I ever saw that; don't think I ever saw that.

Q. Will you not tax your memory, and say whether or not that was not called to your attention, that letter, as being the letter which made the book which you hold in your hand an official letter book and as justifying Sterly's statement,—the first part of his statement, in which he said there were records in it which belonged to this office,—records among these private papers?

A. No, sir; I do not remember anything of the kind.

Q. Then you never saw the blue pencil writing on that page?

A. I don't think that I did.

Q. You referred awhile ago to having heard certain statements made by John F. Gaynor before the Board of Engineers; was there a stenographer present at that time?

A. There was.

Q. Taking minutes of the statements?

A. Yes, sir.

Q. Mr. Gaynor was not sworn, was he?

A. No, sir.

Q. You had no power to administer an oath?

A. No, sir.

1620 Q. Do you remember such a question as this: "Do you know anything about the Empire Construction Company?" to which Mr. Gaynor answered, "Oh, yes". Do you remember such a question and such an answer by Mr. Gaynor, before that Board?

A. I remember it.

Q. Do you remember a question like this: "When was that organized, before or after the Atlantic Contracting Company?" to which answer was made, "Long before. We done some work over in Orange, the Empire Construction Company." Do you remember that?

A. I believe that is what was said, to the best of my belief.

Q. Again, "Did you ever do any other work except in Orange? A. that is the only place we worked, I think"; is that correct?

A. I think so.

Q. Again: "Q. Did you ever get your stock in it? A. No; it never was issued, I don't think",—is that right?

A. I think so.

Q. Again: "Q. Who had charge of the stock book? A. My brother, Will Gaynor, had it. He went there and worked at that and he had all the papers, and I had forgotten all about it when I heard that it turned up in this investigation afterwards." Do you remember that question and answer?

A. To the best of my knowledge.

Q. "What was the cause of the extinction of the Company? A. Because we got through, finished up what we went there to do in Orange". Was that the question and answer?

A. Yes, sir.

Q. Do you remember this question: "It had about the same membership as the Atlantic Contracting Company apparently? A. No. Newton was to have one-third of that —John Newton's share was to be one-third. I don't remember exactly, but he had about one-third of it." Do you remember that question and answer?

A. Yes; referring to the Empire Construction Company.

Q. Then do you remember this question: "With
1621 that exception the organization of the Atlantic Contracting Company seems to have been something of a reorganization of the Empire Construction Company, the same men and about the same shares except in that one instance. Do you know any reason why you changed the name, why you reorganized or that new company was organized? A. I don't know why we did it; only we were not in very good graces in Orange. We had a lot of lawsuits and we wanted to get that company out of existence as soon as we could. We killed horses and men and had everybody pounding us and

we wanted to get out of it." Do you remember that question and answer?

A. I believe that is what he said.

Q. "Q. About how long an interval elapsed between the death and the birth of the other? A. I don't know. You can find out. I don't know about that. You can see the dates because you have the papers in your office when that other was organized; we had to send them all down to your office, every year when we bid on the work." Do you remember that question and answer?

A. Practically; yes, sir.

Q. Do you remember this question: "What percentage of the stock of that Company did B. D. Greene own? A. He owns one-half." Do you remember that question and answer?

A. Yes, sir.

Q. "Q. And you the other half?" to which answer was made: "Yes, sir, with the exception of these two little amounts of either five or three shares that my brothers William and Edward held for the purpose or organization". Do you remember that question and answer?

A. Yes, sir.

Q. "Q. Who is the treasurer of the Company in fact? A. William Gaynor is the Treasurer." Do you remember that?

A. Yes, sir.

Q. "Q. In name, but who is otherwise in fact? A. The fact of it is William is Treasurer and he hands over the 1622 vouchers to Capt. Greene or myself just as it happens to be. We are in fact the Treasurers". Do you remember that question and answer?

A. Practically so.

Q. Do you remember this question by Capt. Carter, at the bottom of page 30: "If anybody besides yourself and Capt. Greene had had any interest whatever in any way in the Atlantic Contracting Company, would you have known of it? A. I should think so; certainly I would." Do you remember that question and answer?

A. Yes, sir.

Q. "Q. I want to ask you this, whether directly or indirectly to me or to anyone for me in any way whatever, has anything either from The Atlantic Contracting Company or anything in which you have been engaged ever been given

to me? A. No, sir. I can answer that positively." Do you remember that question and answer?

A. To the best of my knowledge, that was his reply.

Q. You stated yesterday that, among the papers in the file case,— that there were papers in the file case partly official, purely so, and partly private; now, what official papers did you find in there,—purely official papers?

A. Quite a number of them. I don't remember now, but there were papers from the Chief of Engineers addressed to him officially and signed officially.

Q. Relating to work in this district?

A. Relating to work under his charge.

Q. Many of those letters?

A. I think that each one of those books contains quite a number of them,—ten or fifteen I think; I think I can identify a number.

Q. (handing witness file of papers) I would like you to pick out one that is purely official?

A. I didn't say in this; I said in those books. I don't know about this ; (file case) I possibly might find some here. (Handing out papers) Here is one; here is another; here is another.

Q. Does this first one relate to the work in this district?

1623 A. It is in relation to the withdrawal of a book from the Library in Washington. I think that it is official as much as anything can be.

Q. It has nothing to do with this District?

A. He evidently applied for it from the Library in Washington for work in this District; it is the "River Clyde". It is a work on hydraulics.

Q. Suppose Capt Carter had been relieved from work in this District, of what benefit would that letter be on file to his successor?

A. It is notice about a service rendered by him when he was here.

Q. And suppose when Capt. Carter should have been relieved, and stationed somewhere else, the question should come up about Capt. Carter having written for this book, who would be the proper person to have that letter?

A. I think it ought to be kept on the records of this office.

Q. Suppose, for instance, Capt. Carter should have been sent from here down to Galveston, and the question should

come up, who would be personally responsible for that book?

A. He has to return it; it is only given for a limited time.

Q. Capt. Carter would be responsible?

A. Capt. Carter would be.

Q. And growing out of that, suppose a question should arise as to whether or not he had received that letter?

A. It would be here on the files of the office to show that he had.

Q. Would it not be more proper that he should take that letter with him?

A. I think not, because the original letter, on which the book was obtained, would be on file in this office, and the reply should be here, I think.

Q. You think that an engineer officer, who may be stationed all over this Country, should be put to the inconvenience, in an investigation growing out of that book 1624 for instance, to send back to each one of the places where he had previously been stationed, to find out whether or not he had received such a letter?

A. The book can only be kept out of the library for a certain definite time, and I think the receipt should be on the files of the office where the book was.

Q. Notwithstanding that he might be held personally responsible for the price of it?

A. Yes, sir.

Q. And notwithstanding that it is not gotten officially?

A. It is so regarded by myself as an official letter; I don't think that the Chief of Engineers corresponds with an Officer unofficially in this way.

Q. (Handing witness paper) Here is another letter that you picked out; has that anything to do with work in this district?

A. No; but then the officer served in this district, and all communications addressed in an official way to the Chief of Engineers should go on that file.

Mr. Blair: I will read this letter to the Court, so as to show the witnesses' idea of what constitutes an official and an unofficial document:

"Office of the Chief of Engineers,
United States Army,
Washington, D. C., Sept. 27, 1888.

"Lieut. O. M. Carter,
"Corps of Engineers, U. S. A.,
"Savannah, Ga.

"Sir:

"I have to acknowledge the receipt of the following named book, of the return of which to the Library of this Department you advised the Chief of Engineers in your letter of the 22nd instant:

"Great Campaigns in Europe, 1796-1870.

1625 "By command of Brig. Gen. Casey:

"Very respectfully,
"Your obedient servant,
"CLINTON B. SEARS,
"*Capt., of Engineers, U. S. A.*"

Q. (continuing examination) I believe you said such a book would not go on the property return?

A. No, sir; belongs to the office of the Chief of Engineers; it is only a loan to him.

Q. And notwithstanding the fact that that is a receipt that Capt. Carter on that day did return that book, which does not relate to Engineering work in this district, and notwithstanding the possibility that that book might subsequently be lost, and Capt. Carter be called upon to explain it, yet he should not have that receipt in his possession?

A. He gave no receipt for it.

Q. That is the receipt of the Chief of Engineers to him, that he has returned the book?

A. Yes, sir; but it is an official book, drawn from the official library, in an official way, and is consequently official,—the whole matter is official.

Q. Then you would regard an officer's retained vouchers as official, would you?

A. An officer's retained vouchers?

Q. An Officer's retained vouchers as official papers, would you?

A. Yes, these papers.

Q. His retained copies?

A. These retained copies are retained for his own protection; no, sir, that is his private property, kept for his own personal protection.

Q. Is not this a voucher?

A. Not in that sense, because there is no money spent.

Q. There might be a pecuniary liability on this?

A. Yes, sir; but it was only a loan. The library is
1626 in Washington, and the officer was authorized to draw the book by a circular of the Chief of Engineers, and he applied for the book, and it was given to him. I deem it official; you might not.

Q. You deem this official, and yet you do not deem a retained voucher official?

A. Because the voucher is made in duplicate for the officer's own protection.

Q. This, of course, is copied in Washington?

A. Yes, sir.

Q. You found among those private papers all of Capt. Carter's retained vouchers, did you not?

A. I did not; I didn't see them.

Q. The retained copies?

A. Of his vouchers?

Q. Yes?

A. I didn't see a single voucher; didn't see any at all except what was exhibited to me.

Q. Who produced them?

A. You mean the vouchers in reference to the expenditures of Capt. Carter?

Q. Yes?

A. Whenever we wanted any particular voucher, we called on the office files for it.

Q. But the retained vouchers of Capt Carter, where are they?

A. I don't know.

Q. You never saw them?

A. I never saw them.

Q. Not among these papers?

A. No, sir.

Q. Were they not in the Engineer's office, to your knowledge?

A. I suppose they were.

Q. His retained copies?

A. Yes, sir; but I never called for anything except when it was necessary for us to examine a particular account,
1627 and they were never transferred to us.

Q. Do I understand you to say that you never, in this investigation, looked into the retained vouchers of Capt. Carter?

A. Except when we wanted to investigate a special account.

Q. From whom did you get them?

A. From charge of the office; either from Capt. Gillette or Mr. Sterly.

Q. And you say you don't know where they are now?

A. I do not.

Q. Don't you remember that, when the Board left here to go to New York, Capt. Carter preferred a request to you that he should have the retained copies of his vouchers turned back to him?

A. I don't know that he did.

Q. And that you denied it?

A. I do not know that he did.

Q. Have you not been advised that Capt. Carter has been unable to make his official settlement with the Government, because of the fact that he is not in possession of the retained copies of his vouchers?

A. I have no knowledge of that at all.

Re-direct Examination by the Judge-Advocate.

Q. If the letter transmitting a book to an engineer officer at his station and the letter acknowledging its return are both on file there, the record is complete as a public record?

A. Yes, sir.

Q. There was a confusion yesterday in relation to "B. D. G." standing for "Benjamin D. Greene", and you thought you had seen it in this file of letters received. That was in a letter press book. You were asked in regard to the official matter found in these books; what do you find there in the book I hand you?

A. That is a letter to "Mr. C. P. E. Burgwyn, Richmond, Va. Sir: In compliance with your request of the 17th
1628 inst., I hand you herewith a set of specifications, in triplicate, Improving Cumberland, Ga."

Judge-Advocate: This is letter book No. 7, January 6th, 1893, to November 25th, 1895, page 291. These are in the handwriting of the accused; that is so acknowledged?

Mr. Blair: Yes, sir.

Judge-Advocate: I offer in evidence, and read from the following page:

"United States Engineer Office,
"Savannah, Ga., Sept. 19, 1894.

"Mr. C. I. McDonald,"
(Some place in W. Va.)

"Sir:

"In compliance with your request of the 18th inst., just received, I send you herewith one copy of specifications for Improving Cumberland Sound, Ga. If after consideration of this, you intend to bid on the work, two more copies will be sent to you on application.

"Very truly yours,

O. M. CARTER,
Capt. Corps of Engineers, U. S. A."

On the succeeding page it is very much blotted out, but is I think, to Friday, Charleston, S. C. It is dated Sap. 19, 1894.

"Sir:

"In compliance with your request of the 17th inst., I send you copy of specifications for Improving Cumberland Sound, Ga. If after consideration of this, you intend to bid on the work, two more copies will be sent to you", and it is blurred.

On the succeeding page:

"United States Engineer Office,
"Savannah, Ga., Sep. 19, 1894

To some one in Atlanta, Ga.

"Sir:

In compliance with your request of the 17th inst., I 1629 send you one copy of specifications for improving Cumberland Sound, Ga. If after consideration of this, you intend to bid on the work, two more copies will be sent to you on application.

Very truly yours,

O. M. CARTER,
Capt., Corps of Engrs., U. S. A."

On the succeeding page:

"United States Engineer Office,
Savannah, Ga., Sep. 20, 1894.

F. W. Grantham,
Savannah, Ga.

Sir:

In compliance with your request of this date, I send you a copy of specifications for improving Cumberland Sound, Ga.

If after consideration of this, you intend to bid on the work, two more copies will be sent to you on application.

Yours truly,

O. M. CARTER,
Capt., Corps of Engrs., U. S. A."

On the succeeding page:

"United States Engineer Office,
Savannah, Ga., Sep. 21, 1894.

Mr. J. B. Brown,
Gainesville, Fla.

Sir:

In compliance with your request, I transmit herewith a copy of the specifications for improving Cumberland Sound, Ga. If after consideration of this, you intend to bid on the work, two more copies will be sent you on application.

Yours truly,

O. M. CARTER,
Capt., Corps of Engrs., U. S. A."

1630 Q. (handing witness book) In your cross examination, Counsel showed you letter book B; do you recognize that?

A. Yes, sir.

Q. That is the book in regard to which Sterly was brought in, is it not?

A. Yes, sir; to identify this (indicating page).

Q. In relation to that writing; you don't recall whether that was on there or not when you first saw it?

A. I don't know, sir; I don't remember anything about it.

Q. Was Mr. Sterly called in anyway to identify that and give character to the book?

A. He was.

Q. What is that?

A. It is a letter press copy of a code.

Judge-Advocate: I offer in evidence a code or cipher found recorded on page 11 of letter book marked B between two communications dated Sept. 26, 1894 and Oct. 5, 1894.

Mr. Blair: If the Court please, we object to the introduction of the writing in question because; first, it has apparently nothing on earth to do with this case; next, it has not been identified by anybody as anything.

Judge-Advocate: It is found in Capt. Carter's letter press book. It is found in telegrams, addressed to him as well, in this same book.

Mr. Blair: Is that in evidence?

Judge-Advocate: It is in the book, and the book is in evidence.

Mr. Rose: Not yet.

Judge-Advocate: I think very much in evidence.

Mr. Rose: Has it been identified and put in evidence?

Judge-Advocate: If a code is adopted by an officer of the army for his use—

Mr. Blair: There is no proof of that; I submit that you are not on the witness stand.

1631 Judge-Advocate: I offer this code as found in his book for explanation to be made by the same book.

Mr. Blair: If the Court please, we object to the introduction of this, and we object to the consideration by this Court of anything else in that book until the other things are formally offered by the Judge-Advocate. There is nothing before this Court now as a question of admissibility of evidence save only the writing on page 11 of book B.

Judge-Advocate: (Addressing witness) Colonel, I will excuse you a moment. Mr. Sterly, will you take the stand.

JOHN W. O. STERLY, a witness for the prosecution, previously sworn, recalled, testified as follows:

Direct Examination by the Judge-Advocate.

Q. What is that impression on page 11 of that book?

A. That is an impression of a code that was Capt. Carter's.

Q. Capt. Carter's code?

A. Yes. sir.

Q. Who prepared it?

A. Some words by Capt. Carter; I may have added some words.

Q. Between you, it was a code that was adopted?

A. Yes, sir.

Q. For what purpose?

A. For the purpose of shortening the length of telegrams, and when Capt. Carter was away without any authority, to communicate with him so that nobody else could understand.

Q. That was the purpose of the adoption of that code?

A. Yes, sir.

Q. Did you write it out as it is there? Is that your writing?

A. Yes, sir.

Q. Was the impression placed in that book by you?
A. Yes, sir.
Q. By whose direction?
A. By Capt. Carter's.
1632 Q. What is the letter next following?
A. On page 12,—it is a telegram to Capt. Carter, to New York.
Q. Is use made of the code in that?
A. Yes, sir.
Q. The code was used for official and personal business?
A. Yes, sir.

Judge-Advocate: Does Counsel withdraw his objection?

Mr. Blair: No, sir; we object to the introduction of the code as having nothing to do with this case.

The Court: The Court will retire.

The members of the court then, at 12.35 p. m., withdrew to an adjoining room, and the Court was closed; after which, at 12.45 p. m., the members of the Court resuming their seats, the Court was opened, and the President, in the presence of the accused, his counsel, the Judge-Advocate and the Reporter, announced:

The Court decides not to sustain the objection.

Judge-Advocate: This code is found on page 11 of letter book marked B, and is as follows:

Reported your departure today,	"Graecus"
Reported your return today,	"Hamburg"
Report my departure to day on a ..... days leave of absence,	"Organ"
Report my return to station,	"Berli-n"
Accounts inspected today,	"Fabius"
Where will mail reach you?	"Urgent"
Important mail forwarded to,	"Oscar"
Everything allright in district,	"Condor"
Wire me at ..... if everything is all right in district,	"Brand"
Send ..... by express to ..... by the	"Express"
Tell Newmins to meet me at depot,	"Nemens",

Judge-Advocate: To show that this code was used for official purposes—

Mr. Blair: Under what specification does that come,—
1633 this telegram?

Judge-Advocate: To fasten the use of this code, and a "deposit" of a "thousand today". It may have some

relation to the general charge of conspiracy. (Reading telegram)

"October 5th, 4.

"Capt. O. M. Carter,
University Club,
Madison Avenue & 26th Street,
New York City.

Repairs to Fernandina disapproved. Deposit thousand today. Condor.

STERLY"

"Off. Bus. Gov't. Rate. Paid."

Judge-Advocate: I offer telegram of October 5th on page 13.

Mr. Blair: If the Court please, we object to the introduction of this telegram, which being interpreted means: Reported your departure today. Everything all right in your district; dated Oct. 5, 1894. We object because it is not relevant under any specification in this case.

Judge-Advocate: If an officer is absent from his station in a distant city, and a telegram is sent to him from here, addressed to him in that city, indicating that he should be here, or just leaving here, and the other parties named in the conspiracy charged against him are some of them in New York, it does not require a very keen vision to see the relevancy of this evidence, and I ask the ruling of the Court.

Mr. Blair: And when the same letter book shows that this accused had authority from the Chief of Engineers so to report himself, not in that special instance, but in other and similar instances, though in that instance, there was oral authority for that. It seems to me that the Judge-Advocate fails—

Judge-Advocate: Authority from the Chief of Engi-
1634 neers to make a false report! I cannot conceive it.

Mr. Blair: The explanation of this matter, I think, will be very plain to the Court, and that the language of the Judge-Advocate in that behalf is not justified will be equally plain. We expect to prove that wherever this defendant was absent from his post, it was by the authority of the Chief of Engineers; that the fact that he telegraphed from some where else down here to report his departure as of a certain date was to make the record that, upon that date his leave of absence began; that prior to that date, he was absent either on duty or under authority of the Chief of Engineers. That we expect to prove partly in writing and partly orally.

Judge-Advocate: I do not think even in the Century Dictionary, as perfect as it is, it can be found that "departure" means "presence".

The Court: The Court will retire.

The members of the Court then, at 12.55 o'clock p. m., withdrew to an adjoining room, and the Court was closed. After which, at 1.14 o'clock p. m., the members of the Court resuming their seats, the Court was opened, and the President, in the presence of the accused, his counsel, the Judge-Advocate and the reporter, announced:

The Court has decided not to sustain the objection.

Judge-Advocate: I read from page 13 of letter book marked B:

"October 5th, 4.

"Capt. O. M. Carter,
University Club,
Madison Avenue and 26th Street,
New York City.

Graecus. Condor.

STERLY."

"Off. Bus. Gov't Rate. Paid."

The witness, J. W. O. Sterly, excused.

1635 GEORGE L. GILLESPIE, a witness for the prosecution, resumed the stand, and testified as follows:

Direct Examination by the Judge-Advocate.

Q. You informed me that you desired to make a correction in your response to one of Mr. Blair's questions?

A. Mr. Blair asked me if I had allowed the records to go into the hands of any persons. I remember now that I permitted the Assistant Treasurer of the United States in New York to examine the stubs of the check book as an expert.

Cross-Examination by Mr. Blair.

Q. Any other person now that you recall?

A. I don't think so.

Q. As to any part of the papers?

A. I don't remember. The stubs of the check book and bank statements which were checked by him as an expert.

Q. And was there anything else you allowed the Assistant Treasurer to examine besides the stubs of the books and the bank statements?

A. No, sir.

Witness excused.

* * * * *

1640 JOHN W. O. STERLY, a witness for the prosecution, previously sworn, recalled, testified as follows:

Direct Examination by the Judge-Advocate.

Judge-Advocate: I call the Court's attention to Specification 3rd of the 3rd Charge. It is to be found on page 12 of the printed Specifications.

Q. (Handing witness letter book) I hand you letter book No. 4, page 283; that is from the public records of the office?

A. Yes, sir; Savannah Harbor No. 4.

Judge-Advocate: I offer in evidence and read letter to be found on page 283 of the book just indicated.

"Subject: Continuing Contract Works.

"United States Engineer Office,
Savannah, Ga., Dec. 18, 1896.

"Brig. Gen. Wm. P. Craighill,
Chief of Engineers, U. S. Army.
Washington, D. C.

"General:

"In compliance with instructions dated December 15, 1896. (18,475) I have the honor to submit a comparative statement showing the estimate of cost of the improvement of Savannah Harbor, Georgia, under the appropriation of June 3rd, 1896, and the probable cost of the same works under the contracts which have recently been made.

"Very respectfully,
"Your obedient servant,
"O. M. CARTER,
"Capt., Corps of Engrs., U. S. A."

(One enclosure)"

The enclosure referred to is on the succeeding page:
"Savannah Harbor, Georgia.
(Including Steamboat Channel,—Savannah to Beaufort.)

1641 Estimated Cost of Improvement.
(Provided all work be completed by July 1, 1897), $1,148,950
Probable Cost under Present Contracts.
(Provided all works be completed by July 1, 1897), $1,137,000"

Q. (Handing witness book) On page 290 there appears endorsements; what are they?

A. The first endorsement is from the office of the Chief of Engineers and the second endorsement from Capt. Carter to the Chief of Engineers of December 31, 1896.

Q. Won't you read those endorsements.

A. (Witness reading) "1st endorsement, Office Chief of Engineers, U. S. Army, December 24, 1896. Respectfully returned to Capt. Carter attention being invited to endorsement of this date on his similar letter of December 18 in regard to Cumberland Sound. (13475) E. D.

3

By command of Brig. Gen. Craighill:

A. MacKenzie,
Lt. Col., Corps of Engineers.

18475

1
Inclo, 2 accompg.
1 inclosure.

2d indorsement, United States Engineer Office, Savannah, Ga., December 31, 1896. Respectfully returned to the Chief of Engineers, U. S. A., Washington, D. C., inviting attention to additional inclosure.

O. M. Carter,
Capt., Corps of Engineers, U. S. A.

S. H. 95/96.
(1 additional inclosure)
1 inclosure retd.)"

Q. Have you that additional inclosure?

A. Yes, sir; The inclosure is copied on pages 291 and 292.
(Witness continued to read as on following page)

1642 "(Savannah Harbor, Georgia.)
(Including steamboat channel, Savannah, Georgia, to Beaufort, South Carolina.)

Estimate.
(Provided all works be completed by July 1, 1897.)

10,500 lineal feet training wall at $90.00	$945,000.00
Engineering and contingencies	47,250.00
Maintenance to July 1, 1897,	50,000.00
185,000 cubic yards dredging at $0.20,	37,000.00
30,000 square yards brush mattresses at $1.00,	30,000.00
10,000 cubic yards stone at $3.00,	30,000.00
Engineering and contingencies,	9,700.00
	$1,148,950.00

Contract.
(Provided all works be completed by July 1, 1897)

300,000* square yards brush mattresses at $0.95,	285,000.00
25,000 tons first class stone at $3.90	97,500.00
25,000 tons second class stone at $3.90,	97,500.00
50,000 cubic yards third class stone at $3.50,	175,000.00
100,000 cubic yards fourth class stone at $2.75,	295,000.00
1,435,000 cubic yards dredging at $0.13,	186,550.00
	1,136,550.00**"

(Witness) There are two stars against this total and one star marked against the 300,000 square yards of brush mattresses. Then there is a star against the following remarks:

"*In the specifications only 200,000 square yards of mattresses are given, but as new soundings show that 300,000 square yards will be required, this estimate has been changed as provided in par. 44 of the specifications."

Witness: Then comes a remark with two stars :

"**Should work be completed by July 1, 1897, the balance on hand would pay for engineering and superintendence, hence provision for that is not made."

1643 Q. Now find indorsement of December 24, 1896, in a similar letter in regard to Cumberland Sound.

A. That is in another book.

Q. What book is that in?

A. Cumberland Sound book number two.

Q. Do you find the first indorsement there of December 24, 1896?

A. Yes, sir.

Judge-Advocate: That is the indorsement referred to in indorsement read by Mr. Sterly under date of December 24, 1896.

Q. Please read that indorsement.

A. (Witness reading) "1st indorsement, Office Chief of Engineers, U. S. Army, December 24, 1896.

"Respectfully returned to Capt. Carter to make a comparison between estimate and probable cost under the contracts already made for Cumberland Sound, and to permit this office to furnish information called for, a more detailed statement than that given by Capt. Carter is necessary. As indicated by the within slip, an attempt at such detailed comparison has been made here, but as quantities in estimate and contract do not agree, the comparison is not a proper one; but it would indicate the character of comparison desired.

By command of Brig. Gen. Craighill:

A. MacKenzie,
Lt. Col., Corps of Engineers."

18475

3

1 inclo. 4 accompg.

2d indorsement, U. S. Engineer Office, Savannah, Ga.,—

Judge Advocate: You needn't read that.

Q. (Handing witness book). What is that?

A. On page 115 estimate, Cumberland Sound, Georgia, and cost of contract for Cumberland Sound, Georgia.

Judge Advocate: This is all offered in evidence, and I will read it.—

1644 (Reading):

"Cumberland Sound, Georgia.

"Estimate.

425,000 square yards brush mattresses at $1.00	$425,000.00
300,000 cubic yards second class stone at $3.25,	975,000.00
125,000 cubic yards first class stone at $6.00,	750,000.00
Engineering and contingencies,	200,000.00
	$2,350,000.00

Contract.

200,000 square yards brush mattresses at $1.10	220,000.00
50,000 tons first class stone at $5.25,	262,500.00
75,000 tons second class stone at $5.25	393,750.00
100,000 cubic yards third class stone at $3.90,	390,000.00
250,000 cubic yards fourth class stone at $3.50,	875,000.00
Engineering and contingencies,	108,112.00
	$2,249,362.00''

Mr. Blair: We understand that that is offered under the specification just referred to, the third specifications?

Judge-Advocate: No; but that it is admissible. All the specifications go to the conspiracy, I would say to counsel.

Mr. Blair: If it is offered specially under the third specification which the Judge-Advocate read, we object. If offered generally under the conspiracy charge, we have no objection.

Judge-Advocate: It is offered generally under the conspiracy charge, and incidentally in connection with this, having a meaning and connection with it through correspondence, and showing that 400,000 square yards estimated for the mattresses, and only 200,000 square yards put in the contract, and the evidence will show what became subsequently of that contract, and that only first and second class stone were referred to in the estimate, and 250,000 cubic yards of stone at $3.50 appear in the contract, 25c a cubic yard more than the second class stone appearing in the estimate.

Q. (Judge-Advocate continuing) What is that paper?

1645 A. That is a letter from the Chief of Engineers to Capt. Carter in regard to, ''continuing contract works.''

Judge-Advocate: That letter should have gone in first. (Reading)—

''Subject: Continuing-contract works.

Office of the Chief of Engineers,
United States Army,
Washington, D. C., December 15, 1896.

''Capt. O. M. Carter,
Corps of Engineers,
Savannah, Ga.

Captain:

Please submit a comparative statement, showing the estimate of cost of the improvement of Savannah Harbor, Georgia, under the appropriation of June 3, 1896, and the

probable cost of the same work under the contracts which have recently been made. Also a similar statement for the work on Cumberland Sound.

By command of Brig. Gen. Craighill:

Very respectfully,
Your obedient servant,
A. MacKenzie,
Lt. Col., Corps of Engineers."

Witness excused.

1646 JULIUS H. GRUNDEL, a witness for the prosecution, previously sworn, re-called, testified as follows:

Direct Examination by the Judge-Advocate.

Q. You testified that— When you were on the witness stand before, you testified that you were a draftsman in the Engineer office here?

A. Yes, sir.

Q. And in Capt. Carter's office for some years; were you there from 1894 to 1897?

A. Yes, sir.

Q. When surveys and examinations were made, who made the drawings of them?

A. I did.

Q. Who has charge of the official drawings on file in the office?

A. I do; I have.

Q. Do the records show that between the period, May 1st, 1896, and Jan. 1st., 1897, any survey or examination was made at the proposed locations of brush work called for by the contract of 1896 for Savannah Harbor?

A. Will you please repeat that question.

Q. Do the records shows that during the period between May 1st, 1896, and January 1st, 1897, any survey or examination was made at the proposed locations of brush work called for by the contract of 1896 for Savannah Harbor?

A. No, sir.

Q. The records do not show that any was made?

A. No, sir.

Q. What was the last map of the site of the Tybee breakwater, made previous to June 6, 1896.

A. There was one made by Mr. Cooper February 3, 1897.

Q. Previous, not afterwards?

A. Previous; one made by Mr. Twiggs in October or November, 1894.

Q. Have you that with you?

A. Yes, sir.

1647 Q. Please produce it.

A. (Witness produces map.)

Q. That is what?

A. That is a map of the entrance to Savannah Harbor, October and November, 1894, showing direction of ebb currents, and modified plan of improvement. "U. S. Engineer Office, Savannah, Ga., December 7, 1894, to accompany reports of date. O. M. Carter, Captain, Corps of Engineers, U. S. A."

Q. When was the next survey made after this survey?

A. February 3rd, 1897.

Q. Is there any evidence of any other survey or partial survey between these periods?

A. No, sir, not on the breakwater.

Q. Not on the official records?

A. No, sir.

Q. Was the breakwater actually built as shown on the map of 1894?

A. No, sir; it was moved farther south.

Q. Have you the map of February 3rd, 1897?

A. Yes, sir (reading from map) "Proposed location of Breakwater; Soundings on site of Breakwater, Tybee Roads, done by A. S. Cooper, February 3, 1897. U. S. Engineer Office, April 13, 1897. Office Copy."

Q. Official copy?

A. Yes, sir; "O. M. Carter, Captain Corps of Engineers."

Judge-Advocate: This is offered in evidence, and blue print of it will accompany the records, marked Exhibit 280.

Q. Was the work begun as shown on map of February 3, 1897, as you have it?

A. Yes, sir, the exact location.

Q. What was the average depth of water on projected site as shown by drawing of 1894?

A. 10.1 feet.

1648 Q. What was the average depth of water on site of breakwater as built?

A. Eight and seven-tenths feet.

Q. How much deeper, then, was the water on the site as projected than on the site as built?

A. One and four-tenths feet.

Cross-Examination by Mr. Blair.

Q. Do you know of your own knowledge that this survey was taken on February 3rd, 1897?

A. Yes, sir.

Q. How do you know it?

A. Because Mr. Cooper platted it,—made the survey, and the books show the dates, and Mr. Cooper platted the original soundings, and I traced them.

Q. You were not out on the work February 3rd, 1897?

A. No, sir.

Q. And did not see Mr. Cooper, or anybody else, out on the Detached Extension of the Breakwater?

A. No, sir; his books would show the date.

Q. Did you see Mr. Cooper, or anybody else, out on the Detached Extension of the Breakwater February 3rd, 1897?

A. No, sir.

Q. And you did not see any soundings taken on that day, did you?

A. No, sir.

Q. Do you know whether any soundings were taken or not on any portion of this Detached Extension between the 6th day of June, and the 31st of Deecmber, 1896?

A. Do I know?

Q. Yes.

A. Well, I did not see anybody take the soundings, and the records do not show it in the office.

1649 Q. Then you do not know whether anybody went out there and took soundings or not, do you?

A. No, sir.

Q. Between those dates, June 6th and December 31st, 1896?

A. No, sir.

Q. You testified the other day as to the charts of the Cockspur Island training wall?

A. Yes, sir.

Q. And the Oyster Bed training wall.

A. Yes, sir.

Q. And today of this Breakwater chart?

A. Yes, sir.

Q. And the other day of the Breakwater chart?

A. Yes, sir.

Q. And profile and cross-section?

A. Yes, sir.
Q. Did you draw all of these?
A. Yes, sir.
Q. Were they each and all of them accurately constructed from the data given you?
A. Yes, sir.
Q. From whom did you get your data?
A. Mr. Cooper.
Q. Anybody else?
A. And from notes in the office.
Q. What notes?
A. Construction profiles.
Q. Whose were they?
A. Mr. Coopers.
Q. Drawn by him?
A. Yes, sir.
Q. From what other data?
A. From data that he gave me on his survey made in October.
1650 Q. Made by whom?
A. By Mr. Cooper.
Q. Now, about the map of Cumberland Sound, concerning which you testified a few days ago, did you draw that?
A. Yes sir.
Q. And from data given you by whom?
A. That was in the office; notes in the office,—the construction notes.
Q. Whose notes?
A. Mr. Twiggs' notes.
Q. Anybody else?
A. Mr. Gieseler's notes; from his survey in October and November, 1897.
Q. Did Mr. Cooper give you any notes on that work?
A. No sir; the only thing that Mr. Cooper did was to go through the reports and look up the amount of stone and price of it.
Q. Now from the data which you received from these various sources relating to Cumberland Sound, I understand you constructed the chart,—you drew it?
A. Yes sir.
Q. Is it accurate from the data?
A. Yes sir.

Re-direct Examination by the Judge-Advocate.

Q. I understood you to say that, between June 1st and December 31st, 1896, there was no record here in the office of any new soundings in answer to a question of counsel?

A. In what particular work?

Q. Tybee Breakwater, or any work mentioned in the contract of 1896, Savannah Harbor.

A. Mr. Cooper made a survey in October, 1896, I think, and Mr. Brown made a survey in April and May, 1897; that is, simply an examination of the harbor,—did not go out 1651 on the Breakwater, or outside of the channel.

Q. Was there any survey or sounding made of localities to be covered by mattresses under the contract of 1896 between those dates?

A. No sir.

Re-cross Examination by Mr. Blair.

Q. You testify to that and you testified in your direct examination, not from your own observation?

A. No sir.

Q. Did you observe them in making the soundings?

A. No sir, I did not see them in making the soundings. It is not to be supposed that I have to be out on the ground.

Q. I simply want to know if you saw the soundings taken.

A. No sir.

Re-direct Examination by the Judge-Advocate.

Q. You do office work?

A. Yes sir.

Q. And there is no record of any soundings or any notes of soundings in the office?

A. No sir.

Witness excused.

Judge-Advocate: The Tybee Breakwater and the Detached Extension of the Oyster Bed training wall, Savannah Harbor, is the same work, sometimes referred to under different names.

(At this point in the proceedings of the day, reporter W. O. Tarver was relieved by reporter George T. Cann.)

1652 JOHN W. O. STERLY, recalled as a witness for the prosecution, having been previously duly sworn, testified as follows:—

Direct Examination.

Questions by the Judge-Advocate.

Q. Do you know, Mr. Sterly, if the records of the office here show when the order of the Secretary of War to the authorities of Savannah to remove certain obstructions at the Quarantine Station was revoked?

A. It was never revoked.

Q. Are you sure about that?

Mr. Rose: There ought to be a record; let him produce the record.

Witness: (To the Judge-Advocate) Am I right, that I was asked the question whether the order of the Secretary of War to the city of Savannah to remove the obstructions, to remove the structures at the Quarantine Station, has ever been revoked?

Q. Yes.

A. No, sir, it has not been revoked.

Q. That is still in force?

A. No, sir, it is not in force. There was another Board, and the Harbor line has been changed there.

Mr. Blair: Now, we object to any further statements of that sort from this witness, because a day or two ago the Judge-Advocate offered to introduce the report of the Board, relating to this harbor line; we objected, and the Court sustained the objection. Moreover, the record, if there be such record, is the best evidence, and not the memory of this witness, which, it is apparent to the Court, is limited on this point.

Witness: I am positive there has been none.

Q. There has been no expressed revocation of that order from the Secretary of War to the city of Savannah, and in December, 1896 and throughout the whole month, that order was in force?

1653 A. Yes, sir.

Q. And had been since it was originally given?

A. Yes, sir, December, '94.

Q. Do you know of your own knowledge that the harbor line at the Quarantine Station has been abandoned?

Mr. Blair: I object to that, if the Court please; if there has been an abandonment of it, there is an official record.

Judge-Advocate: There is an official record.

* * * * *

1654 Judge-Advocate: And it is that which I wish to go into the record, that the time did come when the harbor lines were abandoned, and with it the orders to the city of Savannah to remove the obstructions, and it is not necessary to submit the report of the Board. It is the brief that is submitted. That "January 6th, Secretary of War approved the recommendation of the Board on Harbor lines, Savannah, in the report November 19, 1897, that the harbor line at Quarantine be abandoned".

Mr. Blair: O, I presume it might as well go in after reading it. I withdraw the objection, if the Court please.

Judge-Advocate: Well, I'm satisfied.

Judge-Advocate: The Court will understand that I am disappointed in two instances this morning; one witness abandoned me, and the other failed to prove very responsive, and that exhausts the preparation that was made for today's business. I will endeavor to have some work for tomorrow's session.

The President: Will you be ready at ten o'clock?

1655 Judge-Advocate: Eleven o'clock. I cannot be ready at ten o'clock, General.

The President: If there are no objections, the Court will adjourn until that hour.

Here the Court, at 2.30 o'clock, P. M., adjourned until tomorrow, February 17th, 1898, at 11 o'clock A. M.

THOMAS F. BARR
Col. & Asst. Judge Adv. Genl
Judge Advocate.

1656 United States Court Room,
Savannah, Georgia, February 17, 1898.

Court met pursuant to adjournment at 11 o'clock, A. M. today.

Present.

All the members of the Court, and the Judge-Advocate.

The accused, his counsel, and the reporter, G. T. Cann, were also present.

Judge-Advocate: May it please the Court, I offer this morning in evidence some additional reports of operations

made by the accused for the different months, from November 1896 to July, 1897. There are here reports of operations for improving Cumberland Sound, Georgia, made by the accused, for November and December, 1896, for January, February, March, April, May, June and July, 1897.

Judge-Advocate: (Reading) Report of Operations for the month of October, 1896, for Improving Cumberland Sound, Ga.; present project adopted June 3, 1896. The project adopted June 3, 1896, contemplates the establishment of a navigable channel across the bar, nineteen feet at mean low water. This is to be accomplished by the construction of two jetties of stone, with a mattress hearting wherever admissible, resting upon a foundation mattress of brush, starting from the shores on opposite sides of the entrance, and extending seaward upon converging lines, so directed that the ends will be parallel to each other, and about 3,900 feet apart. The scour between the jetties is to be aided by dredging, if necessary; the cost of the improvement is estimated at
1657 $2,350,000.00. Each report, so far as the printed portion is concerned, which I have read, contains the same language and the attention of the Court is directed to the fact that a mattress hearting, wherever admissible, appears in each of them which, when it appeared in the letter of the accused, was so felicitously explained by the counsel, as an inadvertence. The report of operations shows that "Property has been cared for and necessary office work done". "Probable operations for next month: To begin work on jetty construction". I don't think it is necessary to read these, as copies of them will be attached to the Exhibits, and I call the attention of the reporter to the fact that there are pencil memoranda upon some of these, which will not be copied.

Mr. Blair: Let me see the July one; I think you got them wrong in the months.

Judge-Advocate: I have given the dates.

Mr. Blair: The report is the Report of Operations for the month of June, '97.

Judge-Advocate: I gave the dates as they appear on the back and which is the date of signature, or the date on which the report is made.

Mr. Blair: We think the Judge-Advocate is under a misapprehension; my recollection is that he said, "They are the reports of the accused for the months of October, 1896 to and including, July 1897". Now, they are the reports of September, October and November, 1896, January, February, March,

April, May and June, 1897. There is no report for July by the accused, because he was relieved in July, and could not have made a report.

Judge-Advocate: I conceive that is immaterial, so far as the identification of the paper is concerned.

Mr. Blair: So do I.

1658 Judge Advocate: I gave the date which appeared on the back of each report. Copies of these will be attached to the record, marked, Exhibit 281, 282, 283, 284, 285, 286, 287, 288, and 289.

* * * * *

The President: The Court will take a recess of fifteen minutes.

Here the Court at 12.45 o'clock P. M., took a recess
1693 and the Court met pursuant to recess, at 1 o'clock P. M., and the Court was opened.

Present.

All the members of the Court and the Judge-Advocate; The accused, his counsel, and the reporter, G. T? Cann, were also present.

JOHN K. GARNETT, a witness for the prosecution, being duly sworn, testified as follows.

Direct Examination.

Questions by the Judge-Advocate.

Judge-Advocate: Counsel will understand this is the witness who was absent yesterday, and I promised to examine him at once that he could get away.

Q. Please state your full name and residence?

A. John King Garnett, Garnett, Hampton Co., S. C.

Q. Do you know anything about the Hunting Island Company?

A. Yes, sir.

Q. Who are the owners?

A. The Hunting Island Company.

Q. Who are the stockholders?

A. At the time it was purchased, there were five,—C. H. Shearson, of Savannah, Pat. Calhoun of New York, DeWitt Bruse of Pittsville, Mass., Capt. Carter and myself.

Q. Capt. Carter, the officer here present?

A. Yes, sir.

Q. Do you know of any wood and brush being cut from the property of that company by the Atlantic Contracting Company?

A. Mr. Gaynor spoke to me several times about buy-
1694 ing some brush, there, I think he subsequently cut some of it. I am quite sure I expressed a willingness to give him the brush if he would not cut any trees, so far as I was individually concerned; I went away and left it in the hands of Mr. Shearson, who was in Savannah. I understood some was cut after that time.

Q. Do you know what was paid for it?

A. I do not.

Q. Can you approximate the amount?

A. No, sir, Mr. Mackall was Secretary and Treasurer and looked after all that work; I was absent all summer.

Q. What Mackall is that?

A. W. W. Mackall, of Charlton, Mackall & Anderson. Mr. Mackall the lawyer, W. W. Mackall.

Q. Of the firm of Charlton, Mackall & Anderson?

A. Yes, sir.

Q. You have a map have you not, of the property of that company?

A. Yes, sir.

Q. Have you it with you?

A. I have not, I could point it out on the chart in the office in Savannah.

Q. You have a map of it, have you not?

A. Yes, sir.

Q. That is not in the city?

A. Yes, sir, Capt. Gillette saw it yesterday; I gave it to him yesterday; he asked me about it.

Q. Where is it now?

A. It is here, it can be produced very easily.

Q. I would like to see it.

(Witness to Mr. Charlton) Will you go over and get it?

Mr. Charlton: I have nothing to do with it.

Here the witness goes for the map and returns with it.

1695 *Direct Examination Continued.*

Questions by the Judge-Advocate.

Q. Point out, please, the holdings of the company?

A. All this within the yellow line.

Q. Where is Colleton?

A. That is Colleton River right there.
Q. Now, at what point was brush cut there, if you know?
A. Some along this river (indicating) I think some on the other side, May River, Bluffton.
Q. That is around here? (Indicating)
A. Yes, sir.
Q. What is that map which I just showed you?
A. What is it?
Q. Yes, I want it put upon the record.
A. It is a map, I don't know what else it could be, of that property.
Q. Of what?
A. Of those lands that the Hunting Island Company own.
Q. And there are other lands there too?
A. Not belonging to this company
Q. But there are lands, that is sufficient for the purpose of identification. Will you allow me to make a copy?
A. I have no authority, that plat belongs to the Company. I don't feel I can do so individually.
Q. Who pays the taxes on that property?
A. The company.
Q. Through whom, do you know?
A. Yes, sir, Mr. Mackall.
Q. Have you received dividends from it since the company was organized?
A. No, sir.
1696 Q. Have any deductions been allowed you on assessments or payments?
A. Payments in what way do you mean?
Q. If there have been any payments, have there been any deductions allowed you, any credits?
A. No, sir.
Q. Are there any assessments for expenses?
A. No, I think that the income from it has paid the taxes, and that has been the only expense, and a good portion of that land is cleared and under cultivation.
Q. And rented?
A. Yes, sir.
Q. And you cannot recall what payments, if any, have been made, for the wood and brush that have been cut on there?
A. I don't know that.
Q. But you know it has been cut from these two points that you indicate?

A. Yes, sir.
Q. And by whom was that cut?
A. By Mr. Gaynor, I suppose; he was the party who spoke to me about it.
Q. Did Mr. Gaynor have a contract near there?
A. I don't know of any contract, except this here, that he had at the river.
Q. The river contract?
A. I presume that is what he wanted it for, I don't know/.
Q. When was it?
A. Some time in the early part of 1896, it seems to me.
Judge-Advocate: Some time in 1896?
Mr. Rose: He said the early part.
1697 Q. Some time in the early part of 1896?
A. I think so, it seemed to me it was in the early part of 1896.
Q. Did the same parties continue in ownership?
A. Yes, sir, so far as I know they did. I have not looked over the books, there has been nothing done with the property, if it has been transferred, I don't know.
Q. Have there been any statements issued to the stockholders?
A. No, sir.
Q. Have there been any statements issued to the stockholders of expenses and receipts?
A. None that I have seen.
Q. Do you know if the title to the property is a matter of record?
A. It is.
Q. It is in Beaufort? The record is in Beaufort, is it?
A. Yes, sir.

Cross-Examination.

Questions by Mr. Charlton.
Q. Was this land bought for the purpose of cultivating live brush?
A. Not to my knowledge.
Q. You were very anxious to get rid of the brush?
A. I individually offered to give it away if he didn't cut the trees.
Q. If you didn't give it away and some one didn't come along and buy it, you would have cleared it?

A. That was my suggestion, that we clear it at our expense and sell the property.
Q. You found some one willing to rent it?
A. Not willing to rent it, but to cut the brush.
Q. But afterwards you say you got enough rental to pay the taxes?
A. Yes, sir.
1698 Q. The rental exceeds the taxes?
A. I think so.
Q. The rental amounts to how much?
A. Something over $300.00
Q. And the taxes?
A. Twenty-five or thirty.
Q. How long have you held this valuable land?
A. We have had it some time since 1895. We bought it in the spring or summer of 1895.
Q. Do you propose to hold it forever, or would you be glad to get rid of it?
A. I suppose if anybody wanted it, it could be bought.
Q. Did you buy it for the purpose of having a fort there?
A. We thought so.
Q. And also to build a city?
A. We thought such a thing might happen.
Q. There have been other dreams about that locality before?
A. Yes, sir, we read of some.
Q. In other words, it was a speculation, was not it?
A. That is what we bought it for, with the idea that it was cheap and we could make money out of it, and we thought Mr. Sparks intended to go there with the railroad, he failed and we bought it.
Q. Still a speculation?
A. I judge so.
Q. And still no nearer than you were in the beginning?
A. We have no definite plans in view, as far as I know.

Re-direct Examination.

Questions by the Judge-Advocate.
Q. Mr. Gaynor did not agree to your suggestion,—
1699 that he would take the brush and let the trees alone?
A. He told me he didn't want to cut the trees, only the smaller ones.
Q. He said nothing about small wood?

A. Nothing but brush and small trees.

Q. You would let him cut the small trees for nothing?

A. In places, in some parts, it is quite grown up, quite a jungle, and we supposed if it was cleared away, it would improve the place largely; I thought so.

Judge-Advocate: Would the Court like to look at the map, with what it shows?

The President: There seems to be no desire to look at it.

Mr. Blair: If the Court please, I am authorized to say that Mr. Makall, who is the secretary and treasurer of this company, and knows all about its affairs, is ready and willing if the Judge-Advocate sees fit to serve him with a subpoena, to come before you and say everything he knows in respect to it, and to allow the Judge-Advocate to make a copy of that map.

ARTHUR S. COOPER, recalled as a witness for the prosecution, having been previously duly sworn, testified as follows.

Direct Examination.

Questions by the Judge-Advocate.

Q. You were on duty from May 1894, to July 1895, as assistant engineer?

A. Yes, sir.

Q. How many cubic yards of stone were placed in the works of Savannah harbor during that time?

A. I didn't bring the memorandum with me, Colonel; I think it is somewhere in the neighborhood of 63,000; the 1700 record, however, will show that.

Q. Where is your memorandum?

A. I have it at my room.

Q. Can that be sent for while you are being examined,—can I get that from the office?

A. I don't think anybody else would know where to find it, that is my personal memorandum; nobody would know where to find it except myself.

Q. You will approximate it and put in the statement.

A. I will put in the exact amount afterwards. It is 63,000, the odd figures I don't remember.

Q. You can't tell that.

A. Not until I examine my memorandum.

Q. You can't tell what it is? How much of this was ballast rock obtained in Savannah.?

A. That I don't remember. No, that was exclusive of ballast. There was ballast besides that, that was the Florida rock.

Q. How much ballast rock was obtained in Savannah?

A. During that period?

Q. Yes.

A. That also is on that memorandum, and I have forgotten.

Q. Forgotten to bring it with you?

A. Yes, sir, I can assert that amount the same as I did the other.

Q. Who had the contract to supply this stone?

A. The Florida stone was to be supplied by Mr. Brown, the Atlantic Contracting Company, and Mr. Brown was the sub-contractor under it.

Q. Have you examined the inspector's reports, the reports and vouchers in the office here, for deductions made on this stone?

A. I have examined the field books of the inspectors, and my own field books, and the reports, and the only de-
1701 duction during that period was a small decuction on some ballast rock; none being deducted on the Florida rock.

Q. There was no deduction from the Florida rock during that period which I have mentioned?

A. There was not.

Q. How much of that rock did you see go in place yourself?

A. I suppose probably three fourths of it.

Q. That dirt and small stone deducted, as you testify, was that on more than one occasion?

A. Counsel for the Accused: He said there was none deducted.

Judge-Advocate: He said small stone and ballast.

Mr. Rose: On ballast and not on Florida rock.

Judge-Advocate: I was bringing him down to that, Mr. Rose.

Q. There was a deduction for more than one barge?

A. There was only one barge of ballast rock.

Q. That was the only instance of deduction from ballast rock, or any deduction whatever, do I understand you?

A. That is correct.

Q. And the stone furnished by Mr. Brown, under the subcontract, was all Florida rock?

A. All Florida rock.

Q. Did it all go into the work, do you know?

A. I don't know that I could swear absolutely to that. All that came down the river on lighters went into the work.

Q. That's what I want, all that came down the river on the lighters went into the work?

A. Yes, sir.

Q. And was credited to the contractors?

A. Yes, sir.

Q. And reported for payment?

A. Yes, sir.

1702 Q. The barges were measured, I suppose, when they arrived at the place where the work was to be done

A. They were measured invariably before going into the works, immediately before.

Q. Was any of it below the weight required by the specifications?

A. Yes, sir, there was a small percentage of it below the weight.

Q. What percentage?

A. Somewhere between five and six, I should judge.

Q. Below 25 pounds in weight?

A. Below 25 pounds, yes, sir.

Q. And that was reported for payment also as meeting the requirements?

A. Yes, sir, no mention in the reports was made of small stone, it was simply reported as so many yards of stone.

Q. Did you have a conversation with Capt. Carter in regard to that matter?

A. Yes, sir, I did.

Q. What was it?

A. As near as I can remember, Capt. Carter told me that the small stone would only be mainly in the voids between the large stone, and he did not consider, that they would not really therefore, take up much space on the lighter, and that also in the works, when thrown on the dam, that they would make a tighter dam than if they were all large rock; that is about all that he said about it that I remember.

Q. Did he give you any instructions in regard to it?

A. No, sir, he didn't give me any instructions in regard to it; he simply made that statement. I received no instructions as what to do with small stone.

Q. Did he say it was to go in the work, or was he there to see it go in?

1703 A. I don't think I told him it was going in. He saw the lighters unloaded in many instances.

Q. Did you ever have any instructions that two tons of dirt and small rock would not be paid for?

A. I don't remember of any instructions of that kind.

Q. Had your assistant engineers had instructions to allow the contractors to dump all small rock that would sink on the work?

A. Not that I know of.

Q. Do you know of any instructions to permit the contractors to throw rock outside the works?

A. Well, there has been bricks and things of that sort dumped on the training walls, which were not paid for, by different parties here in Savannah.

Q. I refer now to the contractors on that work. If any part of the Florida rock that was taken down on the lighters of the Atlantic Contracting Company, if they were allowed to throw any part of the rock outside the work?

A. I don't think any instructions were ever given in regard to the throwing of the small rock down. In the Florida rock I don't think I received any instructions at all about that, except as I stated, and that was really not an instruction, it was only an argument in favor of the small rock.

Q. In favor of using it?

A. Yes, but no instructions.

Q. As an engineering fact, would rock weighing 25 pounds, on a lighter of rock, add to the cubic yards in the measurement?

A. That is up to five per cent?

Q. Any per cent.

A. Well, if there was five per cent of rock and 25 pounds or less on the lighter, of Florida rock, as the Florida rock usually came, I think it would add slightly to the meas-

1704 urement of the barge, but not to the full extent of the five per cent, because it would to a certain extent occupy the voids of the big rock, but not entirely so.

Q. To what extent would it add to the percentage?

A. Well, I could give my opinion; it would probably add about half of that.

Q. About two and a half per cent?

A. Two or two and a half per cent.

Q. Was all the rock that went into the work reported for payment?

A. It was.

Q. No deduction made on account of any small rock that was put in?

A. With the exception that I stated.

Q. And that was—?

A. That was ballast rock.

Q. I speak of the Florida stone that was being put in.

A. Yes, sir, it was all reported.

Cross-Examination.

Questions by Mr. Blair:

Q. Mr. Cooper, did you ever make any experiment as to how much of the void would be filled by rock under 25 pounds in a barge load of this stone?

A. No, sir, I simply stated my opinion; that is based on nothing except my judgment.

Q. Nothing but your eye?

A. That is all.

Q. Would that vary with the size of the large rock?

A. Decidedly, if the rock was very much larger, it might really be between the voids.

Q. All of it?

A. Yes, sir.

1705 Q. Now, when you come down to the correct figures of this estimate of yours, and say that of the five per cent in the average barge load or rock under 25 pounds in weight, only two and a half would go into the voids, the two and a half would then be measured and paid for; you base that simply upon your judgment?

A. Purely upon my knowledge of the rock, as having seen it all.

Q. Did you ever make any similar estimate of that kind any where else?

A. Not that I know of.

Q. That is the first and only estimate of that kind that you ever made?

A. I don't remember ever being asked that question before.

Q. You were not asked to examine the rock when it was going into the works, with that idea in view particularly, were you?

A. Not that I remember, sir.

Q. Are you sure of that two and a half percentage as you are of the meaning of S in the formula we discussed the other day?

A. No, I don't know that that has any relation; I don't see any parallel.

Q. Well, there is no parallel in them. Are you as sure of that two and a half per cent being left out of the measure in the average run in the lighters of rock on this work during the time you have spoken of, are you as sure of that as you are that this rock ran in specific gravity, from one and three tenths or one and six tenths, to two and six tenths?

A. No, because that specific gravity was actually measured, that is the result of experiment.

Q. That is a scientific fact which you have established?

A. I don't know as I would say I established that; that is the result of experiment. That don't prove that it is exact, but that is the result, there may be some errors.

1706 Q. That is the result of scientific experiment?

A. Yes, sir.

Q. And they are scientific experiments?

A. I suppose they might be classed so.

Q. You testified the first time you were examined in this court room, that you had received a small red book,, with flexible covers, entitled, "Regulations for the government of employes of the United States Engineer Department, in the District of Savannah, Ga.?"

A. Yes, sir.

Q. You did receive such a copy.?

A. Yes, sir.

Q. You testified further that you had read it and were familiar with it?

A. Yes, sir. I will say, of course, I may not remember all that is in there.

Q. I am not going to try to catch you on any rule; I will read paragraph 105, and then hand it to you and ask you if you recognize the paragraph on page 18 of this book.

(Reading) "In case of minor defects in mattresses, loss of logs in sinking vacant places between mattresses, variations in allignment, piles of dirt in barge loads of stone or shell, stone of inferior quality or under size, etc, the inspector will make a fair estimate, and report the amount in each case, which is not up to the requirements of the contract, and submit his recommendations as to reductions or allowances to be made."

Now, was that paragraph in the copy of the book furnished you by Capt. Carter?

A. I suppose it must have been; I cannot say I remember all of it, but I presume I must have read it at the time.

1707 Q. Why didn't you report those things, the under sized stone, according to the terms of that paragraph?

A. Simply because I didn't think Capt. Carter wanted me to.

Q. Why didn't you think he wanted you?

A. Because he had made an argument in favor of that small stone, leading me to believe that he preferred that stone to be passed, although I had no definite instructions to pass it.

Q. Did you make that argument to the other inspectors there, on that work at the time?

A. Possibly I might; I don't remember it though.

Q. When you made it, if you did, did you tell them that Capt. Carter did not want that stone measured and paid for?

A. I don't remember that; I presume I must have told them in substance what he told me; I may have told it as coming direct from myself; I don't remember whether I did or not.

Q. Do you have any distinct recollection of making any such statement, or giving any such instructions to any particular one of the inspectors, under you in that work?

A. No, I don't remember any specific case; I presume, as you say, it is likely that I did give some instructions about the stone, but I could not remember what it is.

Q. Then you do not make the point on this paragraph that you made heretofore to the paragraph which relates to the mattresses, that you were not told in this paragraph to follow the specifications, but told to follow the contract,—you remember that distinction, don't you?

A. No, not quite, I think you have mis-stated it? I did make the statement that I was not told to follow the specifications in regard to the mats.

Q. Do you remember any such question as this hav-

1708 ing been propounded to you,—Page 249 of the record,

"Q. Let me read you this, 102, 'Mattresses and stone will be measured immediately before they are placed in the work—mattresses will first be carefully examined, and the inspector must satisfy himself they are constructed in accordance with the contract before he accepts them for measure-

ment'. You remember that provision do you?" Do you say that question was asked you?

A. I remember it, yes, sir.

Q. And to that, did you make the reply, 'Yes, sir.'

A. Yes, sir.

Q. "Did you deliberately disobey the instructions contained in this book, to satisfy yourself that they were constructed in accordance with the specifications." Do you remember that question?

A. Yes, sir.

Q. (Reading) "A. I don't think I did; that does not say that they are to be carried out in accordance with the specifications." Do you remember that answer?

A. Yes, sir.

Q. And did you make that answer?

A. I think I did.

Q. (Reading) "Q. Did you see that they were carried out in accordance with the contract?" Do you remember that question?

A. I do.

Q. Was that question asked you?

A. It was.

Q. (Reading) "A. I have not seen the contract, and didn't know what it was." Did you make that answer?

A. I did.

Q. Now, I understand that while paragraph 102, having reference to mattresses, requires that you should follow the contract, you did not follow, and you disobeyed that instruction, or rather, you did not follow paragraph 102, because, as you have said, with respect to the specifications, that paragraph did not require you to follow the specifications?

1709

A. Yes, sir.

Q. While paragraph 105, having the same language, required you to see that the contractors carried out;—you do not make that point, that it does not relate to the specifications?

A. No, sir, I do not; I simply say I did not carry out the order in that paragraph 105, for the reason stated.

Q. Without any further instructions than what you have said here?

A. Yes, sir.

Q. Now, where did Capt. Carter make that statement to you?

A. I don't know.
Q. And when?
A. I don't know.
Q. And in whose presence?
A. I don't know whether it was in anybody's else presence or not.
Q. Alone, like he made the statement to you which you testified to on your direct examination, that he showed you a sample mat and told you to follow that?
A. The sample mat was shown me in the presence of other people, but I do not remember when and where he told me about this stone, I could not say.
Q. In whose presence were his instructions given you to follow the sample mat?
A. I don't know that he made that remark in anybody's hearing; it was on the lighter where the mattress was.
Q. He told you this about filling the voids with small rock, out of the hearing of any other human ear?
1710 A. He may, have, I would not say whether he did or not.
Q. Just as he told you to follow the sample mattress, out of anybody's hearing,—is that right?
A. It may be.
Q. Well, is it?
A. I don't remember whether anybody was within hearing or not; I think probably they were not.
Q. And yet you did not even follow the sample mat, did you?
A. Well, when the work fell below the standard that I was given, I simply reported the fact that they were not as good as the sample given me.
Q. Did you report the hole in the sample mat that you said you saw?
A. I reported it to Capt. Carter in person.
Q. Where?
A. In the private office, over the Southern Bank Building
Q. When?
A. About a week after I saw the mat.
Q. Who heard that?
A. Nobody but Capt. Carter.
Q. Did you think under paragraph 105, which I first read you this morning, the instructions that you shall report defects in stone, etc., not up to the requirements of the con-

tract, do you think that includes the specifications to the contract?

A. I suppose that meant the specifications.

Q. You think so?

A. Yes, sir.

Q. But, under paragraph 102, with respect to mattresses, which says, "Mattresses will first be carefully exam-
1711 ined, and the inspector must satisfy himself they are constructed in accordance with contract before he accepts them for measurement," that does not mean that they must be constructed in accordance with the specifications of that contract?

A. It might mean that, yes, sir.

Q. Well does it mean that?

A. Well, I suppose it might be construed to mean that.

Q. Don't it mean that and nothing else?

A. It might mean that; I say it might be construed to mean that; it does not say that.

Q. Don't you know that in the contracts in this district, there are no specifications in the body of the contract, describing mattresses and stone?

A. I told you I had never had anything to do with the contracts, never saw them made up, and never saw them until this investigation was started.

Q. Never in all your experience have you seen a contract until Capt. Gillette came here?

A. Well, I have seen one; I have not had anything to do with the contracts; I was given the specifications; I might possibly have seen one, but never read them.

Re-direct Examination.

Questions by the Judge-Advocate:

Q. When you reported to Capt. Carter at any time, he had an office room to himself, didn't he?

A. Yes, sir.

Q. Did you ever call in a witness to see what you were talking about.

A. When he called me in to see me by myself, he was always alone; if there was any one there, I waited.

1712 Q. Any official statement you made was necessarily made between yourselves?

A. All of them were between Capt. Carter and myself.

Re-Cross Examination.

Questions by Mr. Blair.

Q. Did you make a memorandum in your note book, your official note book, of the hole in that mat, which you say you reported to Capt. Carter?

A. No, sir, I don't think I ever did.

2nd Re-direct Examination.

Questions by the Judge-Advocate:

Q. Did Capt. Carter ever discuss the points of that book with you?

A. No, sir, not to my knowledge.

Q. Did you ever hear him mention the book?

A. I think I have heard him mention the book at different times.

Q. In what way?

A. It is so seldom he mentioned it, I don't believe I can remember exactly how; he very seldom spoke of the book.

Q. Did he ever call your attention in any way to a paragraph relating to your duties?

A. Not specifically as I remember it.

Q. Did he ever seek to impress upon your memory the close scrutiny which should be given to mattresses and stone delivered under contracts?

A. No, sir, he did not; it was simply as I stated before he wished the work to go on in the same manner that I found it going on, when I came in 1893.

Q. Was it to your interest to pass by mattresses and
1713 stone that in your judgment did not fill the requirements of the specifications?

A. Well, I realized that if I did not do as my superior officer wished me to do, why he would get somebody that would.

Q. It was an entirely selfish interest, then, for the retention of your position that actuated you?

A. Yes, sir.

Q. If it was desirable to fill the interstices between the large rocks with small ones, would it not have been desirable also to have provided for it in the specifications?

A. Yes, sir; I did not think it was necessary to carry out those specifications with any such rigidity. Stones of that

size of 25 pounds and under, in my judgment, were not injurious to the work.

Q. But still, there was no mention of that in the specifications?

A. Not in that manner, no, sir.

Q. The specifications were 25 pounds and over, not 25 pounds and less?

A. Twenty-five pounds and over; that is in the contract of 1892; in the contract of 1896, it was fifteen pounds.

Q. Which would be the most expensive to the bidder,—the ten pounds and upwards, or 25 pounds and upward?

A. Well, there would be some difference, I imagine, in the 25 pounds; I don't think the difference would be very great.

Q. It would be more expensive?

A. It would be more expensive if he was held down to the 25 pound limit.

Q. You spoke of rock weighing 15 pounds and over; is that provided for in some of the specifications?

A. That was provided for in the contract of 1896; in the contract of 1892, it was twenty-five.

1714 Q. What is the average size of rock over 25 pounds that was delivered, the Florida rock?

A. You mean of what it ran as actually delivered?

Q. Yes.

A. I could only give a rough estimate about that; I presume it would average 150 pounds, possible; some of that; possibly, not over 100. Some of them were as heavy as 250 or 300 pounds; not many as heavy as that.

Q. Did it require any derrick for removing the rock that was used from the cars to the lighters?

A. No, sir; it was all thrown off by hand; also from the lighters to the work by hand.

Q. How was it conveyed from the car to the lighter?

A. By hand, thrown off by negro labor.

Q. The rails were laid close to the end?

A. The cars ran close to the end of the dock, and the lighter was run up close to the dock, and to prevent it from falling overboard, and the rock was thrown from the car to the lighter.

Q. By one man?

A. One man took up one stone, and threw it over; it was very rare it required two men to get hold of one stone.

Q. And there was some distance to the further side of the lighter, was not it?

A. The lighters were all 26 feet wide.

Q. One man could throw a stone to the further side of the lighter?

A. Some of the smaller ones; not the majority of the stones. The majority of stone he could not.

Q. Were the men in the lighter adjusting the weights and spreading it around?

A. They kept a man or two on the lighter and built
1715 a wall around to prevent the smaller rock from going overboard, and also to square it up for measurement; pile it up so as to be measured.

Q. In the unloading, which class of stone was taken out first?

A. I don't think any distinction was made. I think they picked the stone out, just as it came, at random.

Q. They used the large stones for building a wall around the lighter?

A. They picked it up as it came on the lighter. Sometimes the lighter would be half-loaded before they built the wall.

Q. That wall, when it was built, was built of large stones, to remain in place?

A. Yes, sir.

Q. Was that wall taken off first, and put on the work?

A. Yes, sir. No, sir.

Q. They used it all on the work?

A. No, sir.

Q. All around the lighter?

A. No, sir. The side from which they started to unload.

Q. The wall nearest the lighter would be first removed?

A. Yes, sir, and when they removed that, that would tip the lighter over, and they would turn the lighter around.

Q. They removed the wall, before they removed the rock from the centre part of the lighter?

A. Yes, sir.

Q. All around?

A. All around.

Q. On each occasion?

A. Yes, sir.

Q. Your experiment about which the counsel spoke to you in relation to the specific gravity of a rock, was to deter-
1716 mine for engineering uses in which the specifications provided that the specific gravity was to be not less than 2.4?

A. Yes, sir, I received orders from Capt. Gillette to determine as near as I could, the average specific gravity of a lighter, and the method of doing that was specified to me that I was to select a certain number of samples from each lighter which in my judgment would represent the average weight of the lighter.

Q. The specific gravity was to determine its sinking power to hold down the brush, was it not?

A. Yes, sir.

Q. Not the determination of the mineralogical nature of the stone itself?

A. No, sir; that was not in question; it was simply to determine what proportion was up to the specifications, and also to determine what was the actual price that was to be paid if it was not up to the specification.

Q. The specific gravity was of the substance to be used for engineering purposes, was it not?

A. The specific gravity is—

Q. That is mentioned in the specifications as 2.4?

A. That was the specific gravity specified in order to get a stone that was a good, heavy stone.

Q. That would sink and stay in place?

A. Yes, sir.

Q. You treated the contractors pretty easy?

A. I did as I thought I was desired to.

Re-Cross Examination.

Questions by Mr. Blair.

Q. How many kinds of specific gravity are there?

1717 A. Only one.

Q. Only one,—that's right.

A. Specific gravity means—

Q. Never mind the definition; we all know that, you gave it to us the other day. There is only one kind of specific gravity, is not that true?

A. Yes, sir.

Q. Whether it be an engineering contract or in a book on chemistry?

A. Excuse me,—in a book on chemistry, there is something similar to that, but it is not called specific gravity, it is called the atomic weight.

Q. There is only one kind of specific gravity in the world?

A. That is all.

Q. Whether in chemistry or an engineering contract, or anywhere else, that's true, is not it?

A. I think so.

Q. When this little red book of regulations was given you, were you told not to follow it by Capt. Carter?

A. I was not.

Q. You were not ordered not to fail to follow it?

A. Yes, in one sense of the word, I was.

Q. How?

A. When I was told to carry out the work in the same manner I found it being carried out, that was in direct violation of the regulations that I received from Capt. Carter.

Q. Was that before or after you got this book?

A. It was before I got this book.

Q. When you got this book, and it was handed to you, did Capt. Carter tell you, Mr. Cooper, "Don't follow this book?"

A. In some instances.

Q. Did he when he handed you the book?

1718 A. No.

Q. Did he tell you not to follow the instructions?

A. In the book?

Q. Yes.

A. No.

Q. What did he say to you?

A. He did not give me the book personally; the book was not given me by Capt. Carter; it was handed to me by Mr. Sterly. Capt. Carter very seldom mentioned that book to me; he very seldom told me to follow the instructions.

Q. You receipted for it?

A. I did.

Q. You can read the English language?

A. I don't think its necessary to answer that question.

Q. And this book is written in English, is it not so?

A. Yes, sir.

Q. Now, you spoke of the method of unloading those lighters on to the works, by whose direction was the particular method which you have described, followed?

A. The contractor used his own method in unloading the stone.

Q. It was under your superintendence, was not it, as assistant engineer?

A. Yes.

Q. If you had desired the contractor for engineering reasons to unload that stone differently, you were in a situation to have compelled him to do so?

A. I could have dictated the method; in many instances I did.

Q. And possibly the beneficient results of this work in some respects come from your orders in that regard?

A. Yes.

Q. You so stated before?

1719 A. I think I had a great deal to do with the method of unloading those lighters.

Q. And your method of unloading those lighters contributed to the success of the work as an engineering project?

A. Yes, sir.

Q. Did you report the method of unloading those lighters to Capt. Carter?

A. I did not.

Q. Anywhere in this district, where you have been engaged as an inspector or assistant engineer, when there was small rock and dirt left in a barge, did you receive any instructions as to the disposition of it, ever at any time?

A. I can't remember that I did; I won't say I did not, I say I can't remember that I did.

Q. What did you do with it?

A. It was invariably thrown on the work, the very smallest was shovelled off and thrown on the work.

Q. Measured and paid for?

A. Yes; the barge was measured regardless of the size of the stone. If enough was of sufficient size to materially increase the measurement, in that case they were paid for.

Q. By whose orders were two and a half tons deducted of ballast rock that you spoke of in your direct examination? You said there was a deduction on this work.

A. I don't remember whether I deducted that or whether one of the inspectors deducted it; I could not tell you.

Q. Why did you deduct it from the ballast rock and not from the Florida rock?

A. Well, in this case it was quite a large amount; there was twenty yards on one lighter that was dirt and stuff

1720 that would have no beneficial effect whatever by being placed anywhere, and consequently, deducted.

Q. Was that paid for?
A. That deduction was not paid for.
Q. What was done with it?
A. Thrown on the lighter and unloaded.
Q. By what authority?
A. I don't see I needed any authority to do that; the lighter was there.
Q. You felt that you had authority to dump stone that did not come up to the specifications, and which was not paid for, on the work?
A. I don't see any authority was needed for doing that.
Q. It was beneficial to the work?
A. Not in that case, it was very largely dirt.
Q. If it was small rock?
A. If it was small rock, it would be some benefit.
Q. Even this dirt was of some benefit?
A. It would not do any harm, the water would wash it away.

Judge-Advocate: I offer in evidence and read the personal report of Capt. Carter, having reference to the second specification, charge 3, on page 17.

"United States Engineer Office,
Savannah, Ga., March 31, 1897.

"Brig. Gen. John M. Wilson,
Chief of Engineers, Washington, D. C.

"Sir:

The following is my personal report for the month of March, 1897, ...

.....

"O. M. CARTER,
Capt. Corps of Engrs."

1721 Judge-Advocate: The part at the lower part is that which bears on the specifications, where the absence during the month was to be accounted for or stated. This has been identified by Mr. McCarthy, the clerk from the Chief of Engineers' office in Washington. A copy will be attached to the record, marked Exhibit No. 295.

JOHN W. Q. STERLY, recalled as a witness for the prosecution, having been previously duly sworn, testified as follows:

Direct Examination.

Questions by the Judge-Advocate.

Q. Where was Capt. Carter, if you know, or your books will show, from the 2d, to the 9th, of March, 1897?

A. Capt. Carter left Savannah on the 2d of March and returned on the 9th, of March.

Q. Do you know where he was?

A. There is a telegram in Capt. Carter's book, which I sent to New York, and I received a telegram from him.

Q. Did you receive that telegram from him? (Handing witness telegram)

A. Yes, sir.

Judge-Advocate: This telegram which has been identified by the witness, as one received by him, is as follows:

"New York, 6 Mch. 1897. Sterly, 324 Duffy St. West. Philadelphia tomorrow. Here Monday, Savannah Tuesday afternoon Southern railway Grant Paulsen request. O. W. C." The "O. W. C." is a typographical error, undoubtedly.

Q. You have identified that telegram as one received by you?

A. Yes, sir.

Q. Did you make a reply to it?

1722 A. This is the reply telegram which I sent to Capt. Carter, and which is copied in a book which I had for Capt. Carter; you have got the book. (Here the book is handed to the witness) Yes, sir, that's the book.

Q. Well, find the telegram.

A. Here is one telegram, March 5, and one on March 6.

Judge-Advocate: The impression of a telegram found on page 208 of book B,—one of the books identified by Col. Gillespie. (Reading) "March 5, '7. Capt. O. M. Carter, University Club, Madison Square, New York. Frank Thompson wires that he will be glad to have you spend Sunday with him in Florida. Sterly."

Q. Is that a reply which you sent to his telegram from New York?

A. Yes, sir.

Judge-Advocate: (Reading) "March 6, Capt. O. M. Car-

ter, University Club, Madison Square, New York. Paulsen asks permission to substitute a larger cable from shore on Tybee to building of his telephone station instead of smaller wire now in use. Sterly."

Judge-Advocate: I offer the monthly report of the accused for the month of May, 1897. The body of this report is practically the same as for the previous month. I will only read its date, June 1, 1897. It is addressed to Brig. Gen. John M. Wilson, Chief of Engineers, Washington, D. C. "The following is my report for the month of May, 1897." The material part is the report as applying to this specification:—"—If absent during the month,—date of leaving station, May 1, May 8, May 20, date of return to station, May 2, May 12, May 24. On leave or on duty, 8 to 10, duty 11 to 12 leave; 20 on leave; 21 to 24 duty. Very respectfully, Your obedient servant,

O. M. CARTER,
Capt. Corps of Engrs.

1723 Judge-Advocate: A copy of this will be attached to the record, marked Exhibit 296.

Q. Is that a copy of the telegram sent by you, Mr. Sterly?

A. That is the original telegram.

Q. Where did you procure it?

A. From the Postal Telegraph and Cable Company furnished it.

Judge-Advocate: I offer in evidence telegram, dated May 25, 1897, to "Capt. O. M. Carter, University Club, Madison Square, New York. Secretary Alger wires that Embassador Haye says your detail entirely acceptable, you may therefore, prepare to go to London. Sterly. Official business, Gov. Rate, Paid."

The place from which it was sent does not appear.

Q. Why did you send that telegram, Mr. Sterly, the one just read by me?

A. I sent that because Capt. Carter was not in town, and I thought he was anxious to know it.

Q. Well, what was the basis of it?

A. Here is the original telegram from Washington, from the Secretary of War to Capt. Carter.

Q. Received?

A. Office Chief of Engineers, War Department, November 13.

Q. Any date there on which it was received?

A. May 25, 1897, from Washington to Capt. Carter.

Judge-Advocate: (Reading) "Washington, D. C. Capt. O. M. Carter, U. S. Army, Savannah, Ga. Embassador Haye says your detail is entirely acceptable, therefore, you can prepare to go to London. R. A. Alger, Secty of War."

Q. You opened the telegram which contained the original of which this is the impression?

A. Yes, sir.

1724 Q. Under authority from the accused to open his telegrams?

A. Yes sir.

Q. Did you receive an answer to that telegram?

A. Yes sir.

Q. Where is it?

A. I destroyed it.

Q. What was it to the best of your recollection?

A. It was a telegram from Captain Carter to wire to the Secretary of War and to the Chief of Engineers and to Colonel Ludlow.

Q. To wire what?

A. I had to wire the contents of those telegrams, I dont remember the contents.

Q. You did send telegrams to those three parties?

A. Yes sir.

Q. Are those the telegrams (handing witness papers)?

A. Yes sir.

Q. Where was Captain Carter or where was his telegram dated from?

A. Captain Carter's telegram was dated from New York.

Q. Those are in your hand-writing?

A. Yes sir.

Q. Signed "O. M. Carter", each of them in your hand-writing?

A. Yes sir.

Judge Advocate:—(reading), "May 25th., 1897."

"To General R. A. Alger

Secretary of War, Washington, D. C.

Your telegram referring to my detail to Washington is received. Please accept my most sincere thanks.

"Paid" O. M. CARTER."

Q. That was sent from Savannah?

A. From Savannah, yes.

1725 Judge Advocate: (reading)

"May 25th., 1897".

"To General John M. Wilson,
Chief of Engineers, U. S. Army,
Washington, D. C.

Secretary wires I shall go to London. Please accept my sincere thanks.

O. M. CARTER."

"Paid."

"May 25th., 1897."

"To Colonel William Ludlow
Army Building, New York

Have been detailed to London. Many thanks for your courtesy. Bon voyage.

O. M. CARTER."

"Paid."

Q. These were all written by you and sent by you from Savannah on the date written therein?

A. Yes, sir.

Q. Was that your own language used in those telegrams?

A. No sir, it was verbatim as I was told to telegraph.

Q. At the time?

A. Yes sir, it was a repetition of the telegram.

Q. A repetition of the telegram sent to you by Captain Carter?

A. Yes, sir.

Q. You have a list of the contractors, when does that list begin, at what date?

A. It begins at the fourth of September, 1880, and ends October sixth, 1896.

1726 Mr. Blair: (To the Judge Advocate) You will furnish us with a copy of that?

Judge Advocate:—Yes.

Q. When was this compiled?

A. It was compiled a few days ago.

Q. By yourself?

A. Yes sir.

Q. From the office records?

A. Yes sir.

Q. When did Captain Carter report here for duty, do you remember?

A. I dont remember the date but it was in the fall of 1884.

Q. When were contracts first let in Captain Carter's own name?

A. In the fall or winter of 1888, September, 1888, I think it was right after that, I think it was October or November, 1888.

Q. Did you underline with red ink certain contractors, what contractors are those?

A. Those are the contracts for dredging.

Q. And the others are all jetty work?

A. The others are jetty work.

Judge Advocate:—I offer this compilation in evidence as bringing in juxtaposition the name of the different contractors, since September 4th., 1880 up to the date of the last contract, and with other information which the Court will perceive as I read. This goes back to the first contract under Gen Gilmore which was mentioned by the counsel for the defense in reading from records and papers in relation to the advertising and the furnishing of prospective bidders with blanks and specifications.

Here the Judge Advocate reads the compilation above referred to to the Court).

Judge Advocate:—October there should be September.

Judge Advocate:—A copy of this will be attached to the record and marked Exhibit 297.

1727 The President: If there are no objections, the Court will stand adjourned until tomorrow morning at eleven o'clock.

(Here the Court at 2.55 o'clock P. M. adjourned until tomorrow morning, February 18th, 1898, at eleven o'clock A. M.)

THOMAS F. BARR
Col. & Asst. Judge Adv. Genl.
Judge Advocate.

1728 United States Court Room,
Savannah, Georgia, February 18, 1898.

Court met pursuant to its adjournment of yesterday at eleven o'clock a. m.

Present:

All members of the Court and the Judge-Advocate.

The accused, his counsel and the Reporter, W. O. Tarver, were also present.

The President: Court will come to order.

JOHN W. O. STERLY, a witness for the prosecution previously sworn, recalled, testified as follows:

Direct Examination by the Judge-Advocate.

Q. (Handing witness book) What is that book?

A. New Fort at Tybee Island Letter Book.

Judge-Advocate: I offer in evidence and read:

"Subject: Construction of Wharf, Tybee Island, Georgia.

"United States Engineer Office,
"Savannah, Ga., November 24, 1896.

"Brig. Gen. Wm. P. Craighill,
"Chief of Engineers, U. S. Army,
Washington, D. C.
(Through Col. Peter C. Hains,
"Corps of Engineers, U. S. A.,
Div. Engineer, Southeastern Division,
Baltimore, Md.)

"General:

"The Venable Construction Company, to whom the contract for building a battery on Tybee Island has been awarded, desire to begin work at once. The delays have been so great that an advertisement of thirty days and the construction of a wharf of the character contemplated in my specifica-
1729 tions of the 30th ultimo will retard work on the battery.

"I respectfully suggest therefore, that I be authorized to call for proposals for construction of wharf and railway by circular letter and ten days notice, and to modify the wharf so as to omit all bracing, the general character of the structure to be shown as on the tracing herewith.

"To save time and expense, it is proposed further to ex-

tend the wharf only to a depth of fifteen feet at mean low water.

"Please wire authority herein requested.

"Very Respectfully
Your obedient servant,

O. M. CARTER,
Capt., Corps of Engineers, U. S. A."

Q. Have you anything to show what amount was credited to Capt. Carter in the Sub-treasury in New York on March 30, 1893?

A. With the Assistant Treasurer, $37,030.49.

Q. What amount was credited to him in the Merchants Nat'l Bank of Savannah on that same date?

A. $1,005.62.

Q. What balance was on hand on March 31st, the same year?

A. At the end of that day, there was no funds on hand.

Q. What became of the money, do you know, or the credits?

A. Two checks were drawn for that amount in payment of voucher in favor of the Atlantic Contracting Co. or of E. H. Gaynor.

Q. (Handing witness paper) Is that the voucher for those payments?

A. Yes, sir; part payment.

Judge-Advocate: I offer in evidence and read: (The Judge-Advocate then read Voucher No. 8, Month of March, 1893, in favor of the Atlantic Contracting Co., John F. Gaynor, President, for $38,076.11, copy of which is attached to the record marked Exhibit No. 298.)

Q. Where was Capt. Carter on the 31st of March in that year?

A. Capt. Carter was in Brunswick on duty.

Q. Do you know when that voucher was signed?

1730 A. The voucher was signed in blank by the contractor.

Q. Before the account was made up?

A. Yes, sir; invariably all vouchers for the contractor were signed in blank; I always kept them in the office.

Q. Do you know when that account was made up, when the amounts were filled in?

A. They were filled in after the monthly account was figured in.

Q. Do you remember when the monthly account was received?

A. The monthly account must have been received in the morning not later than the 1st of April; the work closed on the 30th,—31st.

Q. Then, on the 31st, the amount could not have been ascertained?

A. No, sir; unless the 31st might have been a Sunday, but the check would not have been drawn on Sunday.

Q. The check would not have been drawn on Sunday, had it been Sunday, would it?

A. No, sir.

Q. The Inspectors reports for the month's work are usually due and received when?

A. They are mailed by the Inspectors after the close of the work.

Q. On the last day of the month?

A. On the last day of the month, reaching the office on the 1st day of the month.

Q. When did Capt. Carter return to Savannah?

A. Capt. Carter returned on the 2nd of April.

Q. Look on page 86, Miscellaneous N. 18?

A. On page 86 is Capt. Carter's personal report.

Judge-Advocate: I offer in evidence and read from Capt. Carter's personal report to the Chief of Engineers for the month of March, dated April 3rd, 1893:

"Date of Leaving Station: 13) 25 27 30
)
"Date of Return to Station: 19) 26 28 April 2.
"On leave or on duty: Leave. Duty.

"Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. Corps Engrs."

1731 Q. On that date, when everything was checked out from the sub-treasury in New York and from the Merchants Nat'l Bank in Savannah, was there any money standing to the official credit of Capt. Carter in any other bank?

A. No, sir; not at that date.

Q. At that time was there any money due either the contractors or other persons?

A. Yes, sir.

Q. Do you know to what extent?

A. At that time there was money due for the dredging

contractor, and there was money due for the balance of the payrolls which had not come to the office yet at the end of the month and there was a minus balance on Savannah Harbor at that time; we drew it out against the total balance on hand.

Q. (Handing witness paper) What is that paper?

A. That is the office computation for work done at Savannah Harbor during February, 1895.

Q. I notice under the head of "Pile Work", encircled by a blue pencil mark, "Barge and Hose"; after "100 linear feet, Estimate for Barge and Hose",—in whose handwriting is that "Barge and Hose?"

A. Capt. Carter's handwriting.

Q. Can you explain its meaning?

A. It means that the payment;—that 100 linear feet of work was estimate for the hire of the barge and for a certain number of hose.

Q. Hire of a barge by whom?

A. By Capt. Carter from the Atlantic Contracting Co.

Q. And the purchase of hose from The Atlantic Contracting Co.?

A. Yes, sir.

Judge-Advocate: A blue print of that computation will be attached to the record marked Exhibit 299.

1732 Q. (Handing witness paper) What is that paper?

A. That is Mr. Geisler's monthly estimate of work done in Savannah Harbor, February, 1895.

Q. Covering what period?

A. Covering the month of February, 1895.

Judge-Advocate: I offer this report in evidence, reading, however, only one item. A copy of the whole report will be attached to the record marked Exhibit No. 300.

(Reading) "200.0 linear feet, Pile Work, at $1.60, $320.00", with the annotation: "100 lin. feet of this are an equivalent for rubber hose and rent of barge."

Q. (Handing witness paper) What is this?

A. "Voucher No. 10, March, 1895, Paid to the Atlantic Contracting Company for Jetty Work" for work done during the month of February, 1895.

Judge-Advocate: I offer this voucher in evidence, and a copy will be attached to the record marked Exhibit 301. (This Voucher No. 10, just referred to, read by the Judge-Advocate.)

Q. (Handing witness paper) What is that paper?

A. Capt. Carter's Report of Operations, for Savannah Harbor, to the Chief of Engineers, for February, 1895.

Judge-Advocate: I offer in evidence Report of Capt. Carter dated March 9th, 1895, of Operations for the month of February, 1895, copy of which will be attached to the record marked Exhibit No. 302. (The Judge-Advocate then read the paper.)

I read from the Annual Report of Capt. Carter, being Appendix M of the Annual Report of the Chief of Engineers for 1895, page 1455:

"One hundred more linear feet of pile work were used at various places, making a total of 2,296 linear feet of pile work appearing in the monthly reports and estimates of the fiscal year."

Q. Look at Savannah Harbor Book, page 409; that is an official record?

A. Yes, sir.

1733 Judge-Advocate: I offer in evidence and read: (Reading)

"Subject: Appropriation for Savannah Harbor, Ga.

"United States Engineer Office,
Savannah, Ga., July 12, 1897.

"Mr. Edward H. Gaynor,
Treasurer The Atlantic Contracting Company,
Savannah, Georgia.

"Dear Sir:

Replying to your inquiry of this date, I have to inform you that $75,000.00 have been reserved to pay for work under your contract done in this harbor after June 30th, 1897. "You will be paid on August 2d, for all work done during the present month; and as early in the month of August as it shall have been earned, you will be paid the balance of the $75,000.00. "After that date, no payments can be made until another appropriation is made; but certificates, which you may be able to negotiate, will be given you for any work done before funds become available again.

Very respectfully,
Your obedient servant,
O. M. Carter,
Capt. Corps of Engrs. U. S. A."

I read from the same book, page 410: (Reading)

"Subject: Spurs and Training Walls, Savannah Harbor, Ga.

"United States Engineer Office,
Savannah, Ga. July 12, 1897.

"The Atlantic Contracting Company,
Savannah, Georgia.

Dear Sirs:

It is desired that the crests of the Spurs connecting the Training Walls with the river banks in Savannah harbor be lowered to mean low water. No funds are available for this purpose. It has occurred to me that you might make
1734 use of enough of the material removed to pay you for the necessary labor in connection therewith, thus entailing no expense on the United States for this much needed work. Please consider this matter and inform me whether you care to remove any rock and logs under those conditions.

Very respectfully,
Your obedient servant,
Capt. Corps of Engrs., U. S. A."

Q. (Handing witness paper) Do you identify that paper?

A. That is an answer to that letter just read, to The Atlantic Contracting Company.

Judge-Advocate: I offer in evidence and read the following:

"The Atlantic Contracting Company,
John F. Gaynor, President.
Savannah, Ga., July 17, 1897.

"Capt. O. M. Carter,
Corps Engineers, U. S. A.,
Savannah, Ga.

"Sir:

In reply to your letter of 12th inst., regarding the removal of crest off spurs connecting training walls with river banks in Savannah river. We are willing to undertake the work and carry it forward as long as we can do so without loss to ourselves.

Yours very respectfully,
E. H. Gaynor."

Q. Do the records of the office show any authority from the Chief of Engineers modifying the contract, or authorizing the cutting off of the spurs connecting the training walls?

1735 A. Not that I know of.

Q. You would know it if such authority existed?

A. Yes, sir.
Q. Or cutting them off done?
A. Yes, sir.
Q. That there was authority or was not?
A. No, sir; there is no authority.
Q. Look at C. S. book, No. 2, page 230.
A. (Witness handed the Judge-Advocate the book and page referred to)
Judge-Advocate: I offer in evidence: (Reading)
"Subject, Appropriation for Cumberland Sound.

"United States Engineer Office,
Savannah, Ga., July 17, 1897.

"Mr. Wm. T. Gaynor,
Secretary of The Atlantic Contracting Company,
Fernandina, Florida.

Sir:

Replying to your inquiry, I have to inform you that should the pending bill appropriating $50,000.00 for Fernandina, become a law, a check for $3,000 more on account of work done by you, will be drawn to your order, not later than August 2, 1897.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. Corps of Engrs., U. S. A."

Q. When did Capt. Carter leave Savannah?
A. Capt. Carter left Savannah on the 17th of July, 1897.
Q. Look at copy book, Miscellaneous No. 7, page 177.
A. Yes, sir. (Witness handed the Judge-Advocate the book)
Judge-Advocate: I offer in evidence and read:

"United States Engineer Office,
"Savannah, Ga., August 3, 1889.

1736 "Mr. Wm. T. Gaynor,
Fayetteville, N. Y.

"Sir:

Your contract for work upon Savannah Harbor and River, Ga., expired on July 20th last. You are informed that unless this contract is extended at your request, payments cannot be made. An application for such an extension should bear a date previous to that on which the contract expired.

Very respectfully,
Your obedient servant,
O. M. CARTER,
1st Lieut. Corps of Engrs., U. S. A."

Q. Look at page 268, same book. What is that?

A. It is the first indorsement on an application from W. T. Gaynor.

Judge-Advocate: I offer in evidence and read: (Reading)

Fayetteville, N. Y., July 15, 1889. Gaynor, Wm. T. Forwarded by Lieut. O. M. Carter. On contract for jetty work in Savannah Harbor, Ga., expiring on July 20, 1889, requests an extension of sixty days. Delays caused by heavy rains. First Indorsement. U. S. Engineer Office,

Savannah, Ga., August 12, 1889.

Respectfully transmitted to

Chief of Engineers, U. S. A.,

Washington, D. C.

The delay in the completion of the contract has not been the fault of the contractor, and I respectfully recommend that the extension asked for be granted.

O. M. CARTER,

"S. H. 27, 1889." *1st Lieut. Corps of Engrs., U. S. A."*

Q. Do you know if there is a copy of that communication from Mr. Gaynor in the office?

1737 A. Yes, sir; there is a copy in the office, and an official copy of the indorsement from the Chief of Engineers, filed with it.

Q. (Handing witness a paper) Is that a copy of the letter from Mr. Gaynor, referred to in the indorsement just read?

A. Yes, sir.

Q. In whose handwriting is it?

A. Mr. Connolly's.

Q. Which Connolly?

A. M. A. Connolly.

Judge-Advocate: I read the letter which is a copy of the original on which that indorsement was placed: (Reading)

"Fayetteville, N. Y.,

July 15, 1889.

"Lieut. O. M. Carter,

Corps of Engineers, U. S. A.,

Savannah, Ga.

Lieut.:

I beg leave to ask for an extension of sixty days on my contract for construction of jetties in the Savannah River, on account of delays unavoidably caused in the delivery of stone

by reason of the heavy rain during the past month. Had it not been for this I should have been through with the work.

Very respectfully your,
WM. T. GAYNOR."

The first indorsement I have just read.

"Second Indorsement.

Office of Chief of Engineers, U. S. A.,
Washington, D. C.

Application granted."

1738 3rd Indorsement. U. S. Engineer Office,
New York, N. Y., August 23, 1889.

Record Made.

"Subject, Contract Savannah Harbor, Ga.

Office of the Chief of Engineers, U. S. Army,
Washington, D. C., Oct. 9, 1890.

"Lieut O. M. Carter,
Corps of Engrs.,
Savannah, Ga.

Sir:

Referring to your letter of October 6, 1890, requesting copy of second indorsement on Wm. T. Gaynor's letter, of July 15. 1889, in which an extension of sixty days on his contract for construction of jetties in harbor at Savannah, Ga., was asked: the following is a copy of the indorsement referred to."

This is an official copy of the indorsement.

2n indorsement. Office Chief of Engineers, U. S. Army,
August 16, 1889.

"Respectfully returned to Lieut. O. M. Carter, Corps of Engineers, who is authorized to extend contract as recommended. When such record as may be necessary, has been made, this paper will be returned to this office.

"By order of Major H. M. Adams, Corps of Engineers, in charge:

"THOMAS TURTLE,
"Capt. Corps of Engineers.

"3042—C—1889."

By command of Brig. Gen. Casey:

Very respectfully,
Your obedient servant,
THOMAS TURTLE,
Captain Corps of Engineers."

"A true copy:

THOS. H. REES,
1st Lieut. Corps of Engineers, U. S. A."

1739 Q. You say that letter is in Mr. Connolly's handwriting?

A. Yes, sir.

Q. It is dated, Fayetteville, N. Y.; do you know if Mr. Connolly was in Fayetteville, at that time?

A. No, sir.

Mr. Rose: That is an office copy; he says the original is in Washington.

Mr. Blair: I think it might go in the record, if you please, that it is indorsed: "U. S. Engineer Office, Savannah, Ga., received August 11, 1889."

Q. (Handing witness paper) What is that paper?

A. A letter from Capt. Carter to the Chief of Engineers, about dredging at entrance to Cumberland Sound, Ga.

Q. Is it a letter or a copy of a letter?

A. It is a copy of a letter. (Exhibit 303 attached to record)

Q. From the official records?

A. Yes, sir.

Q. (Handing witness papers) What are these five papers?

A. Supplemental Articles of Agreement between Capt. Carter and The Atlantic Contracting Company, dated 17th of March, 1897. (Exhibits 304, 305, 306, 307 and 308)

Mr. Rose: They are the inclosures to that last letter, are they not?

Judge-Advocate: Yes, sir.

Q. (Handing witness papers) Are those three papers from the official files of the Department? (Exhibits 309, 310, and 311)

A. Yes, sir.

Q. All of them?

A. Yes, sir.

Q. Do you know where Mr. Bangs lived at that time, March 17th, and 18th?

A. March 17th, his address was Fayetteville, N. Y.

1740 Q. Do you know what Mr. Hughes' address was?

A. His address is New York.

Q. Do you know either of those witnesses, James C. Bogart, or Henry Smith?

A. No, sir.

Q. Did you ever see those names on any papers at the Engineer Office, this district?

A. No, sir.

Judge-Advocate: It appears that these papers have been to the office of the Chief of Engineers and the War Department. Received in the office of the Chief of Engineers, March 18, 1897, and in the Record Division of the War Department March 23, 1897. I submit these papers that I have read; they will be attached to the record, marked Exhibits 303, 304, 305, 306, 307, 308, 309, 310 and 311. I ask the Court to examine these papers calling attention to the signatures to the guarantors' bonds.

Q. I hand you Cumberland Sound letter book, No. 2; that is the book you have before identified?

A. Yes, sir.

Q. Judge-Advocate: I offer in evidence and read letter found on page 210:

"Subject, Cumberland Sound, Georgia.

United States Engineer Office,
Savannah, Ga., June 15, 1897.

"Brig. Gen. John M. Wilson,
Chief of Engineers, U. S. Army,
Washington, D. C.

"General:

In compliance with your instructions of the 11th instant (19861) and in accordance with the provision of a concurrent

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resolution of Congress—

1741 "That the Secretary of War be requested to furnish the Congress with such information as he may have in his possession with reference to the present condition of the harbor at Cumberland Sound, and to inform the Congress whether any immeate action is necessary to protect the entrance from being closed against the commerce usually entering the port of Fernandina,

"I have the honor to submit the following report:

"The project for Improving the entrance to Cumberland Sound, which was submitted by the late General Q. A. Gillmore, Corps of Engineers, in 1879, and which was revised in 1891 and again in 1895, aims at securing a navigable depth across the bar of 19 feet at mean low water. The mean rise and fall of tide is 5.9 feet.

"Operations under that project were begun in 1880, but on account of the lack of any system in supplying funds, which have been provided at long intervals and in totally inadequate amounts, it has been impossible to push forward the

works with proper energy, hence they have not obtained at any time the desired controlling influence on the most important hydrographic feature,—the channel location,—and the navigable bar channel has deserted the desired route entirely, the present channel crossing the south jetty about 7,000 feet seaward of its initial point. From the jetty crossing the sailing range runs about S 78 deg. 50 Ms. E, reaching deep water at a distance of somewhat more than a mile, and at a point nearly half a mile south of the outer end of the south jetty. The shoalest point on this line is found near its outer end, where the inner and the outer 15-foot curves are separated by a belt from 300 to 600 feet wide, with the least mean-low-water depths of somewhat less than 13 feet.

1742 "A comparison of the various surveys made since 1888 shows as might be expected under the circumstances, a gradual shifting of the channel to the south. Moreover, the period of increased depths upon which the channel entered in 1893 and which lasted until quite recently, is ended, the shoaling seriously threatening the commerce of the port of Fernandina.

"The discharge finds so much resistance in the long, shallow south channel that a new, short, northern route is opening, its location being nearly parallel to the north jetty and about 1,000 feet from it, thus forming an almost direct continuation of the deep water of Amelia Basin. The erosion of this new channel began in 1895, following the extension of the north jetty, and has advanced so rapidly that the channel now extends more than 3,000 feet into the shoal, with a least width of more than 400 feet between the 12-foot curves. Depths of more than three fathoms arr now found where a sand shoal, bare at low water, existed a few years ago. Between the extreme easterly end of this 12-foot pocket and the 12-foot curve outside the bar there is still a stretch of about half a mile of lesser depth. This barrier is daily decreasing and there is reason to believe that sooner or later it will break down altogether and an uninterrupted new, north channel be established, when the closing of the gap in the south jetty can be commenced.

"The River and Harbor Act of June 3, 1896, appropriated $5,000.00 for Improving Cumberland Sound and providing—

"That contracts may be entered into by the Secretary of War for such material and work as may be necessary to complete the present project, to be jaid for as appropriations may from time to time be made by law, not to exceed in the

aggregate two million three hundred and forty five thousand dollars, exclusive of amount herein and heretofore appropriated.

"Under the provisions of that Act a contract was en-
1743 tered into on October 8, 1896, with The Atlantic Contracting Company of New York for all of the material and labor necessary to complete the work. Operations have been carried on with such vigor by that Company that the funds provided by the Sundry Civil Bill of June 4, 1897, will not suffice to pay for what has been done already. Presumably, however, there is a limit to the readiness and the ability of the company to continue work without payment, and that limit may be reached during this critical period when the new, north channel is in process of formation, when an opportunity is afforded to close the sailing gap in the south jetty, to confine the channel between the jetties and increase the scour there,—all without interfering with navigation,—and when a failure to do this immediately means the loss of an opportunity for quick success which may not be presented again, and the probable closing of the port of Fernandina against much of its usual commerce.

"In view of the urgency of the situation and of the manifest advantages to the United States of aiding artificially in opening the new channel now, I am of opinion that the sum of $500,000.00 should be made available immediately, $50,000.00 of which should be used for sluicing and dredging, and the balance for raising the north and south jetties under the existing contract, without which work dredging will give no satisfactory or permanent relief.

"Two charts accompany this report.

Respectfully submitted,

O. M. Carter,

Captain Corps of Engrs., U. S. A."

(2 charts herewith)"

1744 *Cross-Examination, by Mr. Rose.*

Q. Yesterday you were testifying with reference to Capt. Carter's absence from the city; you recall that, do you?

A. Yes, sir.

Q. Has Capt. Carter, when going away on leave of absence, reported in writing to the Chief of Engineers his destination, and stated that his postoffice and telegraph address would remain at Savannah?

A. In these cases—

Q. No, no; has that ever been done to your knowledge? Answer yes or no.

A. Let me think a moment please. In writing, notifying the Chief in Washington?

Q. Yes; his postoffice and telegraphic address would remain at Savannah?

A. Yes, sir.

Q. You have written such letters for him?

A. Yes, sir; that is—

Q. Just answer my question.

A. When he went away on duty.

Q. On leave of absence, I asked you.

A. On leave of absence, under authority, yes, sir.

Q. He reported where he was gong, but stated that his postoffice and telegraphic address would be at Savannah?

A. When Capt. Carter went away—

Q. Can you answer my question, yes or no?

A. I cannot answer that Yes or No.

Q. Let me ask you again; has Capt. Carter when going away on leave of absence reported in writing to the Chief of Engineers his destination, but stating that his postoffice and telegraphic address would be at Savannah,—would
1745 remain at Savannah?

A. When he reported—

Q. Can't you state yes or no?

A. At times, yes.

Q. Did The Atlantic Contracting Company ever actually cut off the crest of the training walls referred to in the evidence produced here this morning?

A. I never go down the river.

Q. Did you ever know from the records that they actually did that work?

A. I would know.

Q. Is there anything in the records that show that they cut off the crest after the date of this letter?

A. No, sir.

Q. Letter dated in June 1897; there is nothing in the records to show that they did that work at all?

A. I don't know; I would have to look that up.

Q. Do you know whether there is anything in the records showing that Capt. Carter accepted the proposition of the Atlantic Contracting Company to do the work, as contained in that letter?

A. There is no letter on file, after the Atlantic Contracting Company accepted Capt. Carter's proposition.
Q. Did Capt. Carter make a proposition to them?
A. He asked them if they were willing to do it.
Q. Whether they were willing to do it?
A. Yes, sir.
Q. And they replied to that?
A. Yes, sir.
Q. After that there is no correspondence between them?
A. No, sir; but Mr. Ed. Gaynor was here, and he came always to the office.
1746 Q. I show you Exhibit No. 298; in whose handwriting is the written part, beginning underneath the heavy line where the word "Date" is down to the end of the ruling?
A. In Mr. J. B. Connolly's.
Q. And in whose handwriting is the receipt?
A. In my handwriting.
Q. Except the signatures?
A. Yes, sir; which is frequently done.
Q. I didn't ask you that, did I? You are there to answer questions, and not to volunteer anything, please. Will you tell me after the payment of the $38,076.11, if there was any balance due the Atlantic Contracting Company?
A. Yes, sir.
Q. How much?
A. There was a balance due of $20,584.51.
Q. That was 90 per cent, wasn't it?
A. Yes, sir.
Q. That was after deducting the ten per cent?
A. Yes, sir.
Q. On the first of April or 31st, of March,—the payrolls hadn't come in, had they?
A. Some; yes sir.
Q. Were they all complete?
A. Not all.
Q. Can you tell me when these payrolls were paid?
A. The other payrolls?
Q. The payrolls for March.
A. The payrolls for the month of March were paid at the end of March and the beginning of April, when funds were deposited.
Q. Can you tell me the date when funds were deposited to pay these payrolls in April, 1893?
1747 A. It was either the second or third of April that the deposit was made.

Q. On the second or third of April a deposit was made sufficient to pay the payroll?
A. To pay the balance.
Q. And pay the balance due under this contract?
A. Yes, sir.
Q. And also to pay the dredge?
A. To pay the dredge.
Q. Are you sure of that?
A. Yes, sir.
Q. And to pay the bills that were outstanding?
A. The bills were paid gradually as the vouchers were made out.
Q. There was sufficient money deposited to pay the bills?
A. Yes, sir.
Q. On the second or third?
A. Second or third; it may have been the fourth,—I am not sure,—it was the beginning of the month.
Q. Now, the second of April was on a Sunday that year?
A. Then it was not made out that way.
Q. It was on the third, then?
A. Must have been on the third; that is, if the office got the notification of a deposit.
Q. It may have been made before that time?
A. Yes, sir; but you could not draw on it because you would not know it.
Q. But as a matter of fact, you think you got the notification on the third?
A. The notification, to the best of my knowledge and belief, came about the third.

1748 Q. How much was owing to the dredging men on the first of April or the 31st, of March?
A. I haven't got the figures in my head.
Q. Can you give me your best estimate of it in 1893?
A. In 1893—I may be way off in my estimate—there were usually five dredges at work during the period.
Q. You have testified that there was money due the dredgers?
A. Yes, sir.
Q. How much?
A. It may vary from $15,000 to $35,000.; I cannot tell without looking.
Q. Will you look and let us know at a subsequent time?
A. Yes, sir.
Q. In June 1897, there was paid to the Contracting Com-

pany,—in July, $345,000.00, on acount of Cumberland Sound, was there not?

A. On the 6th, of July.

Q. In July, there was paid $345,000.00, was there not?

A. Yes, sir.

Q. The appropriation available was $350,000.00?

A. Yes, sir.

Q. That left $5,000.00?

A. Left $5,000.00.

Q. And it was out of that $5,000, that the $3,000, spoken of, in the letter at page 230, in Cumberland Sound book, was to be paid, as you understood it?

A. Yes, sir; but it never left any funds.

Q. There was $5,000 left applicable to Cumberland Sound.

A. Out of this $5,000 some contingencies were paid which were due.

1749 Q. How much, according to the reports of the inspectors and computations in the office, was there due the Contracting Company, after payment of the $345,000.00 on Cumberland Sound in July 1897?

A. I can look at Cumberland Sound book in a moment and tell you. (After looking at book.) There was a balance due on the first of July, to the Atlantic Contracting Company for work done at Cumberland Sound, $58,923.12.

Q. That is on the first of July, 1897?

A. First of July, 1897.

Q. How much had been deducted for the ten per cent?

A. We had deducted for the ten per cent, $44,873.90.

Q. And the $58,000 that was owing was in excess over and above the ten per cent deducted?

A. Yes, sir; we owed him just net that.

Q. The $58,000 was net after the payment of the $345,000, and after deducting the $44,000 for the ten per cent?

A. Yes, sir.

Q. In the letter to W. T. Gaynor, dated July 15, 1889, it speaks of delay in getting the stone; do you know where the stone was got then?

A. I think I heard them say the stone came from the north; I don't know.

Q. You do not know anything about it?

A. I heard the inspectors mention that they could not get the stone from the north; that is a matter of memory.

Judge-Advocate: It will be necessary for this witness to get a book that I want, and he will also get the figures that

counsel want, and I would suggest that we take a recess while he gets them.

The Court then took a recess from 1.15 to 1.37 o'clock.

The Court reassembled at 1.37 o'clock, pursuant to recess. Present:

All the members of the Court and the Judge-Advocate: The acused, his counsel and the Reporter, W. O. Tarver, were also present.

1750 Q. Have you the information that I asked for before the recess of Court, as to how much was due the dredgers for work done up to the 1st of April, 1893?

A. There was due them net, $5,816.86.

Q. There was due the dredgers five thousand eight hundred and sixteen dollars and eighty-six cents, and there was due the Contracting Co. fifty eight thousand and odd dollars, and there was thirty-eight thousand and seventy six dollars paid, and twenty odd thousand dollars left?

A. Yes, sir.

Q. Can you tell when that dredging was paid for?

A. Yes, sir; it was paid right after the deposit on the 3rd.

Q. The 3rd of April?

A. The third of April; the deposit was made on the 3rd of April.

Re-direct Examination by the Judge-Advocate.

Q. You were asked by Counsel, in the cross-examination, if Capt. Carter, in reporting his departure or his absense informed the Chief of Engineers that his address would be Savannah, Ga., during his absence, and you said that that had been; can you point out a specific instance?

A. That he has reported—

Q. That he, in a communication to the Chief of Engineers, reported that his address would be Savannah, Ga.?

A. Yes, sir.

Q. Let me see it

A. (Witness hands an open letter book to the Judge-Advocate.)

Q. That is on page 216 of what book?

A. My book; official,—semi-official and official matters.

Q. Book in which you put telegrams and letters of what nature?

A. Anything relating to official business, and some private matter,—some personal, private matter.

Q. Is that letter on page 216 in your handwriting?

A. Yes, sir.

1751 Q. It bears no signature; that is, there is no signature legible?

A. It had a signature, but the ink did not copy; that letter was written over Capt. Carter's signature.

Q. Over Capt. Carter's signature?

A. Yes, sir.

Q. You mean over a blank signature?

A. Yes, sir.

Q. You remember that identical letter having been written over a blank signature?

A. Yes, sir.

Q. You say that was a signature signed there in blank?

A. Yes, sir; and I have seen the original letter here lately.

Q. You have seen the original letter here lately?

A. If I am not mistaken.

Judge-Advocate: I read and offer this in evidence: (Reading)

"Leave of Absence. August 16, 1894.

"Brig. Gen. Thomas L. Casey,
Chief of Engineers, U. S. A.,
"Washington, D. C.

"General:

"I have the honor to report my departure on a seven days' leave of absence, taken by myself in acordance with par. 45 A. R. 1889 My address will be Savannah, Ga.

"Very respectfully, your obedient servant,
"Capt., Corps of Engrs., U. S. A."

There is no legbile signature, but a faitn trace of an impression, as the Court can see.

Q. Where was Capt. Carter at that time,—on that day?

A. Capt. Carter was out West at that date.

Q. Did you address him on that date, or about that time?

A. Yes, sir.

Q. Addressed to where?

A. Upper Basin, Wyoming.

1752 Mr. Blair: We object, if the Court please, to the introduction of the letter-press copy offered, on the ground that it is dated in August, 1894. It has nothing to do with any of the specifications relating to abseences which have not been stricken out, and nothing, so far as we can perceive, to do with any other specifications still standing in the case.

* * * * * * * * *

1753 Judge-Advocate: I submit it to show the value of his statements.

Mr. Blair: If the Court please, let the Court take this telegram and read it, but we do not desire it spread upon the record, as has heretofore been done, until the Court passes upon it.

The President: The Court will retire.

The members of the Court then withdrew to an adjoining room, and the Court was closed; after which, the members of the Court resuming their seats, the Court was opened, and the President, in the presence of the accused, his counsel, the Judge Advocate and the Reporter, announced:

The Court sustains the objection of the accused.

Witness Excused.

1754 CASSIUS E. GILLETTE, a witness for the prosecution, previously sworn, recalled, testified as follows:

Direct Examination by the Judge-Advocate.

Q. Have you made any contracts for dredging Cumberland Sound while you have been in charge of that work?

A. No, sir.

Q. Was an appropriation available for such dredging?

A. Yes, sir.

Q. How much was it?

A. Fifty thousand dollars.

Q. When did it become available?

A. In July or August, 1897.

Q. Was that for dredging between the jetties?

A. Yes, sir.

Q. Did you have any offer from dredge men to do such dredging?

A. Yes, sir.

Q. At how much per cubic yard?

A. Ten cents.

Q. Was that for the same kind of dredging provided for in the supplemental contract proposed by Capt. Carter and read here a short time ago?

A. Yes, sir.

Q. In the same place?

A. Yes, sir.

Q. How about the relative amounts?
A. There was about one-tenth as much available at that appropriation as the two million cubic yards would have cost in the supplemental contract referred to; 2,000,000 cubic yards at 25c a cubic yard would have been $500,000.00, which was ten times the amount of the appropriation.
Q. How much could you have excavated for $50,000.00?
A. 500,000 cubic yards.

1755 *Cross-Examination by Mr. Blair.*

Q. Was that in the shape of a formal bid?
A. A verbal offer.
Q. From whom?
A. Rittenhouse Moore.
Witness excused.

Judge-Advocate: The Counsel recognize these books as the books identified heretofore?
Mr. Blair: Yes, sir.
Judge-Advocate: I propose to read a series of letters from the books of Capt. Carter.
I offer the letter addressed to Mr. John F. Gaynor, Fayetteville, N. Y., dated Nov. 2, 1885. on page 248 of Book No. 1.

* * * * *

1756 Judge-Advocate: (Reading)

"November 2, 1885."

"Mr. Jno. F. Gaynor,
"Fayetteville, N. Y.
"Dear Sir:

"If you know of any lumber men who want to buy pine lands in Ga., I think I can put you into something paying. A few days ago, when out on the R. R., I came across a man who has 9,000 acres of first class yellow pine, has never been tapped, and is 8 mi. from R. R. The country is high and rolling. It can be bought at 75c per acre. 5,000 more acres can be bought there.

"I can get a tract of 60,000 acres of virgin yellow pine on Altamaha River for $1.75. This is probably one of the finest tracts in the State, as it is so near market. I expect to go out soon to examine into these lands & will find out all about them, title, kind of timber &c. In the meantime if you know of any one to whom you can sell, or if you are too busy and will send me the names of big firms who might want to buy, I will attend to the matter myself.

"It is not yet cold enough to go to work on our project, so I am looking up find lands & whooping up the Convention.

"Let me hear from you at your earliest convenience.

"Yours &c,

"O. M. CARTER.

"P. S. I have two or three other tracts of from 15,000 to 75,000 acres in view, but of course I must investigate thoroughly before doing anything.

"Unless there are firms that want to buy, however, there is no use in investigating.

C."

1757 Page 8, Book No. 2. (Reading)

"October 1st, 1886.

"The Chief of Engineers,
U. S. Army,
Washington, D. C.

"General:

"I have the honor to transmit herewith my Engineer Property for the U. S. Engineer's Office at Savannah, Ga., for the 3rd quarter, 1886.

"Very respectfully,

"Your obedient servant,

"O. M. CARTER,

"*1st Lt., Corps of Engineers, U. S. A.*"

"1 Enclosure."

I offer the statement of an account on page 333 of book No. 2.

Mr. Blair: (Addressing the Judge-Advocate) Admitted that it is to Capt. Greene.

* * * * *

1758 Judge-Advocate: The accounts reads:

"Apr.	15,	1886,	$1600.	Int. at 6% on	$1600,	Apr.	15	to	Jul.	7,	$21.86
Paid	July	7,	1886,	$200.	"	"	"	"	1400,	Jul.	7,	"	Aug.	5,	5.83
"	Aug.	5,	"	100.	"	"	"	"	1300,	Aug.	5	"	"	24,	4.77
"	"	24,	"	25.	"	"	"	"	1275,	Aug.	24	"	Dec.	3,	21.04
"	Dec.	3,	"	100.	"	"	"	"	1175,	Dec.	3	"	Jan.	8,	6.85
"	Jan.	8,	1887,	100.	"	"	"	"	1075,	Jan.	8	"	Mar.	1,	9.50
"	Mar.	1,	"	100.	"	"	"	"	975,	Mar.	1	"	Apr.	4,	5.36
"	Apr.	4,	"	50.	"	"	"	"	925,	Apr.	4	"	May	4,	4.65
"	May	4,	"	50.	"	"	"	"	875,	May	4	"	"	23,	2.77
"	"	23,	"	100.	"	"	"	"	775,	"	23	"	Jun.	1,	0.90
"	Jun.	1,	"	100.	"	"	"	"	675,	Jun.	1	"	Aug.	5,	7.20
"	Aug.	5,	"	200.	"	"	"	"	475,	Aug.	5	"	Sep.	1,	1.81
"	Sep.	1,	"	100.	"	"	"	"	375,	Sep.	1	"	Nov.	6,	4.06
"	Nov.	6,	"	100.	"	"	"	"	300,	Nov.	6	"	Dec.	2,	1.30
"	Dec.	2,	"	75.	"	"	"	"	200,	Dec.	2	"	Jan.	20,	1.60
"	Jan.	20,	"	200.											
				$1600					Total Int.,						$99.50

"Dear Captain:

"I send you today Exchange on N. Y. for $299.50, which is, I think, the amount due you. With many thanks for your kindness,

"Very faithfully yours,

"O. M. CARTER."

I offer in evidence communication found on page 415 of Book 2: (Reading)

"May 24, 1888.

"Dear Captain:

"The old Gas Company here (using coal gas) made gas at cost to Company of 95c per M ft. The annual consumption was 60,000,000 cu. ft. The present Co. makes water gas. It costs 40c per M ft. and the annual consumption is 75,000,000 cu. ft. The cost to the Co. includes interest on investment, depreciation of plant, salaries, &c.

1759 "Be careful about the air jack and not let any inventor steal our ideas & leave us out. Hydraulic jack will not work as the cotton gets wet. I cannot find out the pressure applied in stowing cotton, but it is the maximum used by the old screw jack, which you have seen. I was just on the track of Minis, who agreed to go halves with me. I think we can arrange to give him 1/4 & you, John and I take 1/4 each if it comes to anything. Keep a record of the expenses & will share that anyway, but above all things don't let some one steal our thunder, as I believe there is something in it.

"I have just been offered a chance in a marble quarry which looks well. It is magnificent marble in appearance & the chances are that it will prove good all through. Do you know where is the best place to have it tested & its marketable value obtained? I'll send you a piece tomorrow. There are only about 5 men in it, & they are the best in Savannah. If it proves what we expect with an investment of $10,000, the yield annually, net, ought to be $120,000, with larger yield by increased plant. If it amounts to anything, of course I want you to go in with me, but say nothing to John as this is an extraneous matter. I hear nothing further about the R. R.

"I leave for Florida in a day or so & will be in the field for about 10 days. I think it will do me good.

"Truly,

"O. M. C."

It is addressed: "Dear Captain," and is on page 415. In the index "415" is "B. D. Greene."

Mr. Rose: That is the one where the "518" appears?

Judge-Advocate: Yes, sir; #415 is in the same figures as those made by whoever made the index.

Mr. Rose: "415" is in ink.

Judge-Advocate: I offer in evidence this letter, found 1760 on page 434 of the same book, No. 2: (reading)

"June 11, 1888.

"Dear Captain:

"What could you afford to pay for rock delivered to you on the cars at Savannah or at Brunswick (to be used at Fernandina)? I expect to go to some quarries on the line of the S. F. & W. in about 10 days & they say they will put rock in at Sav'h or Brunswick at whatever rates I say. Of course, I have not seen the quarries yet, but if the rock is good it will be worth looking into & I want to know what you think good rock, equal to N. Y. stone, would be worth delivered as stated. I have not yet seen Olmstead as he is at Rome.

"I go to Augusta tomorrow & get back in a few days.

"Truly,

"O. M. CARTER."

That is indexed B. D. Greene.

I read the official indorsement found on page 25 of Book No. 3: (Reading)

"2nd indorsement. U. S. Engineer Office,
Savannah, Ga., October 5, 1888.

"Respectfully referred to the Chief of Engineers, U. S. A., "The connections indicated have been made. I will not individually report myself in charge of the Oconee and Ocmulgee Rivers until Oct. 24th, because I did not reecive charge of them until that date. I did not receive charge on Aug. 20, but have changed the date to that as directed, so as to agree with Capt. Hoxie's report. The letters of Aug. 22nd and 28th from the Chief of Engrs. were filed by error with my September letters, and the error arose from that fact.

"I returned from leave of absence on Aug. 19, 1888. The 20th given was a clerical error.

"O. M. CARTER,
"1st Lt., Corps of Engineers, U. S. A."

That book No. 3 is marked "Lt. O. M. C., private."

1761 I offer in evidence letter found on page 71 of the same book, No. 3: (Reading)

"Nov. 22, 1888.

"Dear Captain:

"Mr. Clay has been here and has seen the whole cotton-stowage process, from the flooring to the completion of the

work, and expresses himself as perfectly satisfied that his pneumatic jack will be a success. I gave him all the ideas necessary for him to complete the work, i. e., all that I had not already given him last June the 6th. I also gave him my ideas about the new patent, which will, so far as cotton goes, knock the other out. My idea is to get the jack introduced and then get the method of tying cotton to prevent expansion after being compressed introduced later, after we have gotten out the first in the cotton ports. My scheme is (the later one) an improved method of tying cotton. I explained it all to Mr. Clay, and he says he feels sure that he can perfect the details and make it a perfect success. Now about the pneumatic jack, I think its use in stowing cotton will be only a small part of what it is really worth. I think we can develop it into a motor which for such things as street cars &c., will entirely supplant horse, steam or electricity. You see all the bearings. I spoke to Mr. Clay, and he admits it feasable, and he agrees to let the jack with all its possible developments and with reference especially to its use as a motor go to us. I gave him $100.75 for his traveling expenses, and have his receipt. I did not talk much of the business part with him, as I told him that I preferred that all of that should be conducted through you, you being nearer him. He says that he wishes to draw up an agreement and sign it at once so that we can understand each other and know what we are doing. I told him that I wished him, Gaynor, Minis, and myself with him in the jack, but only you, Gaynor, himself and myself in the cotton tying business. He says he is perfectly willing to enter into any agreement we wish, and I told him I would write you my ideas on the subject, and then he could
1762 draw up an agreement with you, which would be perfectly satisfactory to me. I also look to the pneumatic jack to replace all hydraulic presses for compressing cotton, for forging gun steel, &c., as well as to use as motors on cars &c. In any agreement be sure to distinctly specify that the jack in all of its proper developments, all new patents, &c., relating to it, its use as a press, as a motor, in short all possible developments may belong to us, and that we shall own and control jointly all such patents and developments.

I see no reason why it should not be as valuable as the Westinghouse brake. The cotton tying apparatus, so that it shall not expend but remain dead weight, will bring a royalty of not less than $200,000.00 a year, but I don't think it ought to be put on the market until we introduce the jack,—to gain

on both ends. Whatever you do I shall be satisfied with, but my suggestion is that you, Gaynor, Minis, Clay and I shall each have 1/5 interest in the jack (in the other you, Gaynor, Clay and I have 1/4 each) Clay's share to be paid for by his work, but that if the jack is not successful because of defects in the apparatus, that we five shall bear equally the expense of the work, Clay paying equally with the rest. That we shall control and own all improvements and developments as I have stated &c.

I think we have a thing which is worth millions—the best thing since the air brake. Do not neglect the contract with Clay and be sure to make it full and complete. He seems honest and fair and I have confidence in him yet it is better for all to have a clear written agreement. Whatever the Chili business comes to, this appears to be certain, and if Clay can only do his share, there is no doubt of great financial success.

"I do not see much of Minis, he did not seem as interested as he ought, but he was worried with business which accounts for it. He (Minis) will doubtless want more than 1/5—will perhaps not want Gaynor in. But I can arrange all that.
1763 I have advanced all of the money, done most of the work &c. So he cannot justly claim more than I have said. I told him that the patents &c. were all in hand, which I meant to indicate that you would look after them. Whether or not the patents are taken out in our names jointly or in Clay's alone you must determine but be sure they are safe. Minis just this moment came in and he is perfectly willing to make the disposition I assume, i. e. 1/5 each—but thinks he ought to have 1/4, and that you and Gaynor ought not to want each as much as he. But I explained Gaynor's value in labor troubles &c and he acquiesced in my opinion. Write me as soon as you can. I go to Atlanta again tonight. I fear I shall lose my hearing, as I have acute catarrh of the inner ear, which is difficult to treat and I suffer so much that I find it hard to do my work. In haste.

"Truly,

"To Capt. B. D. Greene." "O. M. CARTER."

I read from page 260 of the same book: (Reading)

"Savannah, May 26, 1889.

"Dear Captain:

"Yours of the 24th, received. I saw Shappard and gave him the specimens I collected. From his partial tests he was very enthusiastic, saying I had the most valuable thing

in the country, that it would make all connected with it rich, &c, &c. Of course, I do not feel very sanguine, so many things have "gone to pot" but I cannot but feel that it may come to something.

"S. is to be here tomorrow night with complete analysis &c., and we shall know what to do. He advises no delay, says Scott and others are looking everywhere, and that if we find it valuable, it should be taken up at once least the secret gets out. I saw Gordon yesterday and told him I wished the same parties as before, viz—you, John, Comer, himself
1764 and myself in it. He objected. Said he wished to share equally with me but didn't wish to admit others &c. Said this was a new deal &c. It was much as I had anticipated, but of course you, John and I go in on my share, which may amount to something. Gordon and I drew up articles of agreement and we each put in $500.00 to get options and bonds for titles, agreeing to put up $2,000.00 more each to complete purchases if all is satisfactory. It was thought best that I should go to Fla. on Tuesday morning, if Shepard's report is favorable and buy at once. Gordon left and will not be here for a week. Shall you be here within a week? If not, can you manage to let me have $2,000.00, if I should need it? I do not want that we should be frozen out of a good thing. I'll write you again tomorrow night after I see Shepard and before going to Fla. Gaynor is not here and I have not seen him in some days. Very truly,

"O. M. CARTER."

That is not addressed to any one, and there is no index to this letter book. The Court will have to judge of its value or nature from its contents.

The Court: If there are no objections, the Court will stand adjourned until tomorrow morning at 11 o'clock A. M.

(Court adjourned at 2.55 o'clock P. M.)

THOMAS F. BARR,
Col. & Asst. Judge Adv. Genl., Judge Adv. Genl.

1765 United States Court Room,
Savannah, Georgia, February 19, 1898.

The Court met pursuant to adjournment of yesterday, this morning at 11 o'clock.

Present: All the members of the Court, and the Judge-Advocate.

The accused, his counsel, and the reporter, G. T. Cann, were also present.

CASSIUS E. GILLETTE, a witness for the prosecution, having been previously duly sworn, testified as follows:

Cross-Examination, Continued.

Questions by Mr. Blair.

Q. You said yesterday that Rittenhouse Moore offered to do dredging in the same place contemplated by the letter of Capt. Carter, at Cumberland Sound, for ten cents a cubic yard, which Mr. Moore was that,—the young man or his father?

A. His father.

Q. And did you talk with him much about it?

A. The conversation I think must have lasted ten or fifteen minutes. It was shortly after I came here; I was unfamiliar with the location or the conditions, and an appropriation of $50,000.00 had recently been made for dredging and sluicing out Cumberland Sound, evidently to enable the work contemplated in that supplemental contract, which was disapproved, to be done.

Q. Well, now, lets get at the conversation with Mr. Moore,—did you talk with him as to what kind of dredge he proposed to use?

1766 A. Yes, sir.

Q. What did he say?

A. He had a sand-sucker which he used at Pensacola, where he got the same price per cubic yard.

Q. That was a barge, was it not?

A. I believe so; It had to be towed with a tug.

Q. It was not a self propeller?

A. It was not a self propeller, no sir.

Q. Did he make this offer of ten cents per cubic yard in the barge or in place?

A. I don't think that was specified; the expectation was

I was to do about $50,000.00 worth of dredging there, and he wanted to do it at ten cents per cubic yard; it would have to be measured in the scow, you could not measure dredging out there on an ocean bar in place.

Q. You say that as an engineer?

A. Yes, sir.

Q. It could not be measured on the bar?

A. It would not be a practicable plan to do it that way.

Q. Therefore, without his expressly saying so, you understood that offer to be ten cents in the bin or in the barge?

A. Oh, yes, sir, certainly.

Q. And what depth of water was that dredging proposed to be done in?

A. Well, that was not a part of the proposition; it was understood it would be very shallow to begin on and would increase as the work progressed. The first part of the work would be quite difficult.

Q. Do you know the location down there?

A. Yes, sir.

1767 Q. And do you know the depth of the water across that bar, proposed to be dredged?

A. There is only a certain part where dredging would have been done, had it been done, between the jetties; it would be quite shoal part of the water.

Q. Well, how deep was the water?

A. I don't remember exactly; six or seven feet, something like that.

Q. What is the range of tide there?

A. Six or seven feet; seven feet, I believe.

Q. Five feet, nine, is it not?

A. It may be five feet nine, or six feet, nine; I don't remember positively.

Q. This is a chart of the entrance to Cumberland Sound, May and June, 1897, under the direction of Capt. O. M. Carter; is that a blue print, do you know, from the records of your office?

A. I believe it is; yes, sir.

Q. This represents the north jetty, and this the south jetty? (Indicating)

A. Yes, sir.

Q. Now, the proposed dredging was to be between those two jetties, I understood you to say?

A. Yes, sir.

Q. And about how far out from the land?

A. I think about three miles.

Q. And that is an open ocean bar, is it not?

A. It is less than three miles from the land.

Q. This is a scale of 500 feet to the inch?

A. It is more than that; two miles would be the average distance from Amelia Island.

Q. Had you given any consideration, or have you given any consideration, as to the line of that proposed dredging?

1768 A. The line proposed in the contract that has been referred to, the supplemental contract, was about parallel to the north jetty, and about one-third the distance from the north and south jetty, through this place.

Q. Examine the soundings there, please, and give the minimum depth that you observe.

A. At one place it is six feet out there, that would nearly be there (indicating) seven; yes, I see it is a little more shoal over there. (indicating)

Q. Here is a six feet curve, is it not?

A. Yes, sir.

Q. Inside the curve it varies from four feet, six, to six feet?

A. From four feet, six, to six feet.

Q. Five feet?

A. There is a narrow place here of six feet; the curves don't meet; there is a place through there (indicating) which is over six feet. Dredging could be begun through that gap. (indicating)

Q. And make your channel a curved channel?

A. To begin on, yes, sir; that would be probably to the advantage of the contractor, as the beginning of the work would be somewhat tedious; otherwise to make a straight channel he would have to take a machine on a shoal and then start forward. lifting the diggers, which would be rather slow; but taking advantage of that depth there, he could make better progress.

Q. And ultimately make the channel straight?

A. Yes, sir; moderately straight, cutting off that ridge there. (Indicating)

Q. Those depths which you have indicated, are mean-low-water depths, are they not?

A. Yes, sir.

Q. And the range of the tides, you say is six or seven feet?

1769 A. I think it is seven feet at that point.

Q. Now, that is an open ocean bar, is it not?

A. Yes, sir; there is something of a ridge on the ground where that north jetty is represented, but otherwise, it is open. The mean rise and fall of the tide is five feet and nine tenths.

Q. Have you observed the water in that vicinity, between the two jetties, as to whether it is rough or smooth water?

A. Well, for an ocean bar, I consider it quite smooth.

Q. Your experience having been largely on the Pacific coast?

A. Yes, sir.

Q. Do you know anything about the bar at Pensacola, or at Charleston?

A. No, sir; I think there is no particular difference, though, in all these bars on the South Atlantic coast.

Q. Have you even made any estimate as to the number of days during which a dredge could dredge in moderately shoal water, between those jetties, in a year?

A. No, I have not.

Q. Would you say that it could dredge more than half the working days of the year?

A. From the records of the office, the days on which the contractors have sunk mats at Cumberland Sound, I should think a contractor could dredge three-fourths of the days in a year, possibly, at the very beginning, he might not work so many; he would have to work only at high tide, if it happened to be rough; there usually I understand, it is rather smoother at high tide than at low tide.

Q. That is a suction dredge which was proposed to be used there?

A. Yes, sir.

Q. Did you understand from Mr. Moore the draft of that barge?

1770 A. I did at the time; in fact, I got the draft from his son; I have forgotten what it was; it was not very great.

Q. And what draft of tug would it take to hold a barge, such as Rittenhouse Moore described, over an open ocean bar?

A. The barge or the barge-dredge, was not thoroughly described to me.

Q. From your experience as an engineer, about what draft of tug boat would be necessary to take this barge, which you say is not a self propeller, and hold it over an open ocean bar?

A. That is a point about which I have not had personal experience; but a moderate sized tug. The average tug that brings in ships from out at sea to the Savannah harbor, ought certainly, to be able to do it; but that is a question, however, I would have to express an expert opinion on, never having seen the dredge at all.

Q. What is the average draft of the average tug you have mentioned?

A. That I do not know.

Q. You do not know whether it would take a seven foot or a 12 foot draft, to take and hold that barge out there on that bar?

A. I would not like to state an opinion as an expert on that point.

Q. If it should take a tug with a draft of 12 feet to hold this Moore barge out there, and the depth of the water at mean-low-water is less than six feet, when would be the only practicable time to work that dredge?

Q. You could only work a short time at high water, to begin on. The difficult thing about this contract, the difficult part, is the first part; but when you take two million cubic yards, it gets enormously cheaper, because in a machine like this, the expensive part is the constant turning, and you lose time in turning round. A tug has to take it down and turn and the amount of turning when the water is shallow, is very
1771 great, and of course, the number of hours they can work is small.

Q. As a matter of fact, with a suction dredge, the pipes follow the vessel, don't they? They are aft?

A. Not necessarily; there are in the Cape Fear, they are nearer the stern than the bow. I don't think they follow clear behind; I don't know how Mr. Moore's barge was arranged.

Q. But they necessarily follow after, that is to say, they don't project forward?

A. O, no.

Q. They trail?

A. They trail, yes, sir.

Q. Even if thrown out amid-ships, the suction portion, then

the further extremity of the pipe on either side would be in the rear or aft of the vessel, would not it?

A. I think not; the only suction dredge of that kind I have ever examined, and that only casually, was the Cape Fear, which did the work at Fernandina, and as I remember it, the suction when lowered, would be a little aft of amidships, in a moderate depth of water.

Q. How did this suction dredge operate, by storing?

A. She propelled herself forward, and there are teeth or rakes just at the mouth of the suction pipe, which cuts up the sand and the suction pipes draw the water and sand up into the barge.

Q. Then it passes over a grating and the sand is deposited and the water runs out?

A. Yes, sir.

Q. The sand is thus stored in a bin?

A. In the hold of the vessel.

Q. Do you know anything as to the cost to the Government of dredging at Pensacola harbor?

1772 A. Only what Mr. Moore told me. He said he had dredged there a very large quantity, at ten cents a yard, and made money at it; but the next time, when the conditions were not quite so favorable, he wanted, I think 12, perhaps 15 cents, as an open market contract, and Major Mahan would not let him have it; he wanted to hold him down to the same old ten cents.

Q. You don't know that he got 64 cents?

A. He told me when the work first began, he got enormous prices; but the next time, he volunteered to do it at ten cents.

Q. Do you know what depth of water he dredged for ten cents?

A. I do not.

Q. Do you know the amount of dredging?

A. I do not.

Q. It would be much easier and cheaper, would it not, to dredge in 16 or 18 feet of water, than in six feet of water?

A. Certainly, because you can work a greater number of hours per day; but the dredging of this two million yards proposed at Cumberland Sound, the part Mr. Moore proposed to take, was the difficult part, and I suppose he knew what he was doing; that was his business.

Q. He proposed to do it at ten cents?

A. Yes, sir.

Q. Do you know whether any self propelling barge could cut that bar between the jetties, at the depths indicated?

A. I don't know; we made an experiment there. The dredge, Cape Fear, came down from Wilmington, at my request; we paid all expenses from the time she came until she returned; she dredged a small amount on the outer bar, 28,000 cubic yards, and the total cost of that was nine cents a yard. She tried through a mistake, not my intention, but by telegraphing, she tried to work between the jetties, and it was smooth mud that would not stay in the hold, but ooze
1773 out, and I believe with that kind of material it is senseless to dredge. When the jetties are built it would wash them out there and they are no good at all, and I was opposed to that kind of dredging.

Q. You say you dredged sand on the south jetty with the Cape Fear at nine cents?

A. Nine cents, and paid all her expenses from Wilmington down and back.

Q. That was the Government price,—you did that by hired labor?

A. Yes, sir, hired labor; I paid all the expenses of the dredge, crew and everything, including restoration of her stores and repairs, and everything; I put her in the same shape as she was before.

Q. And the insurance of that vessel?

A. No, sir.

Q. None of the "amortization"?

A. All except the "amortization".

Q. You also did some dredging across the south jetty, didn't you?

A. Hardly dredging; I removed or deepened the crossing of the south jetty.

Q. Out of this $50,000.00 appropriation?

A. No, sir; that came out of a little balance left from a preceding appropriation; it may have run over it a little bit; but my impression is it was from another appropriation entirely.

Q. You say you got 28,000 cubic yards?

A. That is as I remember it; my assistant engineer figured that out yesterday; 28,000 cubic yards at about nine cents per cubic yard.

Q. Do you know whether it would be practicable to deposit your material in this six feet of water, between the
1774 jetties at Fernandina in scows alongside?

A. Would it be practicable?

Q. Yes.

A. Well, it would be a little difficult; do you mean with a clam shell dredge?

Q. No, with a suction dredge and put the material in the scows alongside.

A. It would be a little inconvenient, but I know of no reason to prevent its being done.

Q. Roughness of the water would not be any objection?

A. That would be what would make trouble, but it ought not to prevent the work.

Q. This offer of Mr. Moore was not accepted by you?

A. No, sir; because I did not want to do dredging in that place; I thought it was a waste of money.

Q. It was a mere verbal proposition, which came to naught?

A. Certainly. He came,—it was only a few days after I took charge of the office, he came in and made this proposition, and he said he understood the appropriation had been made for this purpose, and that he wanted the job, that he knew they were in a hurry, that the people of Fernandina were clamoring for a greater depth of water; he supposed it would be an open market offer and he offered to do it for ten cents a yard.

Q. Has Mr. Moore got any contract at Pensacola now, that you know of?

A. I don't know; he is practically, as I understand it, the contractor for the Savannah Harbor; he owns the dredge, but the contract is in the name of his son.

Q. That is all inside work?

A. Yes, sir.

1775 Q. As to Pensacola, do you know?

A. I don't know about that.

Q. Do you know anything about the cost to the Government at Charleston, for dredging on the ocean bar?

A. I do not.

Q. Or at Pensacola?

A. I do not.

Q. Or at Galveston?

A. I do not.

Q. I omitted to ask you; you intended to state, that price offered to you by Mr. Moore, ten cents, to the Court here, as showing that that was a reasonable sum for dredging between the jetties in the place indicated?

A. I thought it was a reasonable sum; yes, sir.

Q. And thinking so, you stated it to the Court?

A. I stated it; yes, sir; I thought Mr. Moore understood his business; he certainly made the offer in good faith, because he wanted the contract and came to my office for that purpose.

Q. As I understand your testimony you have had personally no practical experience in dredging on an ocean bar?

A. No, sir; the only dredging on an ocean bar I have ever had charge of was this little work done by the Cape Fear.

Q. You never have seen a suction dredge but one in operation?

A. Never to notice her structure; that is the only one.

Q. You never have figured upon the cost of dredging, except as you got it from the work of the Cape. Fear, dredging on an ocean bar?

A. I had my assistant engineer also figure out the cost to the contractor, of the "Gedney", when she worked on Tybee Knoll, which is somewhat analogous; that was
1776 something between five and six cents a cubic yard; it is not certain, however, that we had all the items of the expenses.

Q. Have you examined the figures made as to the cost by the "Gedney"?

A. No, sir; Mr. Cooper figured that out for me, and he was not sure he had everything; he said between five and six cents.

Q. I understood you to say Mr. Gieseler?

A. No, sir; it was my assistant engineer, Mr. Cooper. There are two of them.

Q. He did not figure in that the cost, in that of the Gedney?

A. No, sir; he figured the expense to the contractor. P. Sanford Ross had the contract, and he could not do it with his machine, so reported; it was difficult for him to do it, so the Government took his contract off his hands, that part, at least, and the Gedney came down at the request of the officer in charge, and did the work, and he was to pay the contract price, and pay the expenses of the boat, including rental and insurance, but I think the insurance was left out, whatever that may have been, and the cost to the contractor was between 5 and 6 cents.

Q. You yourself, did not revise those figures?

A. No, sir; I did not check those figures at all; I understood the only item left out by Mr. Cooper was the insurance.

Q. Of course, you are not willing, not having checked the figuring, you are not willing to give it as your expert opinion that that was the true cost?

A. No, sir; I could not swear to it at all; I would say that the dredging at Fernandina, being of an exceedingly soft, easy moving sand, should be much cheaper than at Tybee Knoll, where the sand is hard; that is, it is reported,
1777 hard; I have not examined the sand at Tybee Knoll.

Q. You give that as an expert opinion?

A. The softness of the sand at Fernandina is in all reports in the office. I give that as an expert opinion; it is a very light, easy moving quicksand.

Q. You understand that quicksand on an ocen bar is soft sand?

A. Quicksand on any bar is soft sand, easily washed.

Q. Perhaps hard sand might be easily washed?

A. Easily dug by a sand-sucking machine.

Q. Do you mean soft, in that the material is easily moved by the currents?

A. Easily stirred up by the water or any process.

Q. Do you understand quicksand in a river, for instance—to be a sand in which if you step, a sand not covered by water, in which if you step, you sink with more or less rapidity, and you are not able to extricate yourself?

A. Well, that kind of sand I think, is invariably thoroughly well water soaked.

Q. I mean there is oftentimes no water to it, no depth of water to it.

A. There might not necessarily be; but I never heard of a man sinking in a quicksand without there were a few inches of water on it.

Q. But water more or less, still?

A. O, yes.

Q. You understand the same thing to be the meaning of a quicksand on an ocean bar?

A. I think the word "quicksand" means the same any where.

Q. Just like specific gravity?

A. Specific gravity is a constant thing; the substance which is examined has a variety of meanings, whether it is in
1778 mineralogy or engineering, the specific gravity is the same thing everywhere; but it is the substance, rock, and a variety of things, which makes it mean different things.

Q. That is true, you will find that out too later on; but

coming back to quicksand,—did you ever use a sounding pole on a quicksand, on an ocean bar?

A. I never did.

Q. You don't know how it feels when you strike it with a pole?

A. I do not.

Q. You don't know how it feels when you strike it with the sounding lead?

A. I do not. Mr. Marion Twiggs got into a quicksand at Cumberland Sound, and had a job to get himself out, as I understand, and so it is the same quicksand that may be in a river.

Re-direct Examination.

Questions by the Judge-Advocate.

Q. The Cape Fear, I understood you, dredged 28,000 cubic yards?

A. Roughly, yes, sir.

Q. How long was she engaged in that work?

A. I think something over a month; she had a good deal of bad weather, and could not work.

Q. And in estimating the cost to the Government of that dredging at nine cents, you included the cost of her movements from the time she left her port until she returned to it?

A. Yes, sir.

Q. Where was her port?

A. Wilmington, North Carolina.

1779 Q. Had the excavation continued and involved a larger quantity it would have materially reduced the cost of the dredging?

A. Yes, sir; undoubtedly very much, because the run was so very short, she could only go a few hundred yards, then turn round; a few hundred feet.

Q. After getting the work, started, she could have excavated much more every day?

A. Undoubtedly.

Q. And had she continued in service two months, the cost to the Government would have been very materially decreased?

A. With the same condition of weather it would, yes, sir.

Q. What is your estimate of the cost of the Cape Fear,—what could such a boat be purchased for?

A. I don't remember positively, but I think the Cape Fear cost one hundred thousand dollars.

Q. Then, having $500,000.00 appropriation for the excavation of two million yards, she could have much more than paid for herself?

A. O, unquestionably, much more than paid for herself, and paid numerous dividends on the work of dredging too.

Q. She did some dredging at another point, I understood you to say?

A. Not that I know of.

Q. I understood you to answer Mr. Blair that she had done dredging at another point.

A. I gave the figures of the Gedney; but the only dredging was that work at the mouth of the Savannah river.

Q. What port does the Gedney belong to?

A. United States.

Q. At what port?

A. New York.

Q. That is her home port?

A. Yes, sir.

1780 Q. Under Col. Gillespie, I suppose?

A. She was at that time; I think she is now under Col. Ludlow, I am not positive about that.

Q. She was brought from New York here, and kept how long, do you remember?

A. I don't know; it was part of two years, 1894 and 1895; I don't know anything about the figures about that; Mr. Cooper was here at the time, and gave me the figures; I have just given, but he he did not know the cost of the insurance which had to be paid by the contractors.

Q. Everything else,—the cost of the labor, the salaries of the officers, the wages of the crew, their subsistence, and all other expenses were included?

A. All included and a large daily rental was also paid by the contractors.

Q. The estimate was from 5 to 6 cents a yard—excluding what the insurance cost?

A. Yes, sir; it is possible Mr. Cooper may have figured that out hastily and not accurately.

Q. What was P. Sanford Ross' figure on the contract?

A. Sixteen cents, I think.

Re-cross Examination.

Questions by Mr. Blair.

Q. You give it as an expert opinion in dredging, as an engineer, that under the contract as proposed, the supplemental contract, $500,000.00 for two million yards, that would enable the contractors to buy a large dredge and declare enormous dividends?

A. Yes, sir.

Q. And pay for the dredge before they got through at 25 cents?

1781 A. Yes, sir; undoubtedly that is my opinion.

Q. At that point?

A. At that point.

Q. Between the breakwater?

A. Between the jetties at Cumberland Sound.

Q. And your experience in that behalf is such as you have detailed?

A. It is limited to what I have stated: I base my opinion more on Mr. Moore's offer than I do on my own experience.

A. Although that was a mere offer that bound nobody?

A. Well, it was a business offer; Mr. Moore came to my office, wanting that contract.

Q. It had not been reduced to writing?

A. O, no, sir.

Q. There was nothing to bind him?

A. Nothing whatever.

Q. He could have backed out the next minute?

A. I suppose he could; I don't know what he came there for, if he was going to make an offer and back out. He wanted the contract, and thought I was going to let it right away, as the people were in a hurry for the dredging to be done.

Q. Do you know the capacity of his dredge?

A. I do not.

Q. At what depth did the Gedney dredge down here?

A. I don't know; something between 20 and 25 feet; I suppose she got 26 feet of water at high water, or 20 feet.

Q. What is the minimum depth at which she dredged?

A. Somewhere I suppose between 15 and 20 feet; she deepened it to 20 feet at mean-low-water.

1782 *2nd—Re-direct Examination.*

Questions by the Judge-Advocate.

Q. After Mr. Moore made his offer, you found as a matter of fact you could do it for less than ten cents?

A. I found as a matter of fact; I did not want to do that amount of dredging which the bill provided for; I thought it was an absurdity.

Q. That much you did do, you found you could do for less than ten cents?

A. I did not figure it that way. There was a small amount of dredging to be done I found, and Mr. Moore's dredge was at Pensacola, and it would have taken three weeks to get it around there, and only that small amount of dredging. I don't know he wanted to do it at all. I found it better to get the Cape Fear, which was more convenient.

Q. You gave the people more water, as they desired?

A. Yes, sir.

3rd—Cross-Examination.

Questions by Mr. Blair.

Q. And none of that was done at the point specified in the jetties?

A. No, sir, it was outside of the jetties.

3rd—Re-direct Examination.

Questions by the Judge-Advocate.

Q. That you did not consider necessary at all?

A. No, sir; not that within the jetty; I thought that was a waste of money.

1783 Judge-Advocate: I offer in evidence and read from page 275, of letter book 3, the same book from which I was reading yesterday, when the session closed. (Reading)

"Paid. Night Telegram.

Savannah, Ga., June 6, 1889.

Capt. B. D. Greene,

No. 2, East 15th, St., New York City.

General Alexander desires me to ask you to telegraph to the Morning News at once the following statement over your signature; "The affidavit of Mr. Curtis, so far as it alleges

an attempt upon my part to bribe him and so far as it relates to statements said to have been made by me, reflecting in any manner whatever upon Lieut. Carter, is false in every particular. An affidavit to the effect will follow in due time."

O. M. CARTER,
C.

Telegram at night rate.

Judge-Advocate: I also offer and read from page 276 from the same book: (Reading.)

"Paid. Night Telegram.

Savannah, Ga., June 6, 1889.

"Capt. B. D. Greene,
No. 2, East 15th. St., New York, N. Y.

"The affidavit of Curtis to which my telegram refers is as follows: "In February B. D. Greene renewed the above proposition of Gaynor, stating that he would add to my salary $500 per month, and would get Lieut. Carter to increase said salary, he said it was in his power to secure my appointment, and that he had also the power to have Lieut. Carter remove any obnoxious inspector, instancing Inspector G. W. Brown, who was removed to Fernandina in (1886) eighteen eighty six, and stating that Brown's successor was worth to him 1784 $60 per day. O. M. Carter,
C."

"Telegram at night rate."

Judge-Advocate: I also offer and read from page 277 of the same book: (Reading)

"June 6, 1889.

"Dear Greene:

It is absolutely necessary that you send affidavit as I requested. I had a long talk with Alexander and other of my friends and they all agreed that the first thing to be done was for you and Gaynor to assert under the sanction of an oath (as Curtis has stated his story) that so far as it relates to you, it is unqualifiedly false. Things have been worked up to such an extent that a letter asking for a suspension of judgment will hurt us both immediately. Alexander and Mackall suggest the following affidavit: "Before me &c., personally appeared B. D. G. who &c. deposes and says, 'Certain sworn and other statements of a Mr. W. R. Curtis, reflecting

upon me, have been brought to my attention, and I desire to solemly assert that I never approached Mr. W. R. Curtis with a bribe or other inducement to do any wrong; that I did not state that I had power to secure his appointment as inspector, that I did not state that I had power to have Lieut. Carter remove obnoxious inspectors, or that I had Mr. G. W. Brown sent to Fernandina in 1886, or that Mr. Brown's successor was worth to me $60 per day. The sworn statement of Mr. W. R. Curtis dated May 31, 1899 is so far as it relates to me, or to statements attributed to me, that reflect in any manner whatever upon Lieut. Carter, is false in every particular. Sworn and subscribed to, &c.'

"You may not think this necessary just now, but it is
1785 true and due me and I am here and know the situation
and you must do it at once. Don't fail to insert in the affidavit each and every statement that I have made. I ask John to telegraph you to come here. Every one thinks the affidavit ought to be published at once, other things can follow later. John's affidavit, so far as it relates to him, will be ready. I copy this sheet as I wish to remember the form of affidavit Gen. A. prepared it.

Truly,

O. M. C."

Judge-Advocate: I desire to state to counsel I did as I promised, I looked for copies of those letters read yesterday, and there are no copies in the public records for this date; I did not find them.

Judge-Advocate: I offer in evidence and read from page 10, book 4: letters. On the side of the book Lieut. O. M. Carter, Private; January 16, 1890, to March 16, 1891. (Reading)

"Subject, Surveys of Oconee and Ocmulkee Rivers.

"United States Engineer Office,
Savannah, Ga., Jan. 16, 1890.

"The Chief of Engineers,
U. S. A., Washington, D. C.

"General:

Referring to your letter of the 13th, instant, relating to the reports upon the surveys of the Oconee and Ocmulgee Rivers, I have the honor to state that the assistants have been busy, not only all day but even until ten and eleven o'clock at night, upon this work. Every effort is being made to hasten the

completion of the maps. Until this is done I cannot make such a study of the rivers as will enable me to submit a
1786 creditable report. I hope, however, to have the report upon the Oconee river, ready by the 28th, insts. Those upon the Ocmulgee and Upper Savannah will follow a few days later.

Very respectfully,
Your obedient servant,
O. M. CARTER,
1st-Lieut. Corps of Engrs. U. S. A.

Judge-Advocate: I offer in evidence and read from page 13, of the same book. (Reading)

Subject, Work done on Jetty at Tybee Roads, U

United States Engineer Office,
Savannah, Ga., Jan. 22, 1890.

"Capt. B. D. Greene,
C. E. & Contractor,
New York City.

"Sir:

The firm represented by you built at Tybee Roads a training wall over ten thousand feet long, from 40 to 60 feet in width, and of an average height of about five feet between January 28, and August 19, 1889. The bulk of the work, however, having been done in about four and a half months. In this work there were placed 108,552.28 square yards of log and brush mattresses; 11,561.71 cubic yards of stone, and 586.87 cubic yards of shells.

"It affords me pleasure to state that all work done by your firm has been executed with ability and dispatch and to the entire satisfaction of the United States.

W "Very respectfully,
Your obedient servant,
O. M. CARTER,
1st-Lieut. Corps of Engrs., U. S. A."

1787 Judge-Advocate: I offer to put in the fact, it is as evidence, that on page 119, there is a communication addressed to Brig. Gen. Thomas L. Casey, Chief of Engineers, U. S. A. (Through Col. W. P. Craighill, Chief of Engrs. U. S. A. Division Engineer, S. E. Div.) Washington, D. C., and then there is a long report by Capt. Carter.

Mr. Blair: Which is a professional study.

Judge Advocate: I will read enough to tell its character; it is signed officially. (Reading)

"General:

With the view of securing data to assist in determining the proper width between the training walls, proposed for the improvement of the Savannah river I addressed, a little more than a year ago, a circular letter (copy inclosed) to those officers of the Corps of Engineers having charge of the improvement of tidal streams."

Judge-Advocate: And on page 205 I read a communication.

(Reading)

"Subject, Report of Survey of Altamaha River.

"United States Engineer Office,
Savannah, Ga., July 8, 1891.

"Brig. Gen. T. L. Casey,
Chief of Engineers, U. S. A.
Washington, D. C.

"General:

Replying to your letter of the 6th, inst. concerning my report of the survey of the Altamaha river, I have the honor to state that the reason why I concluded that it might not be possible to get the copies I asked for was that I was told 1788 in Augusta that they could get no more copies of the Savh river report, the addition being exhausted, and hearing that the Altamaha River report had been printed, and not having received it, I feared that the edition had been so limited that none had been furnished to the Engr. Dept., and being in the habit at the close of each fiscal year of binding for my private library one copy of each report of mine printed during that year, and hoping to obtain a copy for that purpose, I made application therefor on July 1.

"If the whole number asked for could not be sent, of course, '90, 80, 75 or 50', as you suggest, would have been very acceptable, and I was not aware my letter had been so worded as to be differently understood until the receipt of your letter of the 6th. I inclose a corrected copy of my request.

"Very respectfully,
Your obedient servant,
O. M. Carter,
Capt. Corps of Engrs.

(1 inclosure)

Judge-Advocate: I read a letter to which the counsel informs me he will object. It is addressed, I offer it is evi-

dence; it is addressed to Dr. W. S. Webb, President Wagner Palace Car Company, opposite Grand Central Depot, New York City. Referring to a business proposition.

* * * * * *

1790 The President: The objection of the accused is not sustained.

1791 Judge-Advocate: (Reading)

"Subject, Adirondack R. R.

"United States Engineer Office,
Savannah, Ga, April 6, 1891.

"Dr. W. S. Webb,
Pres. Wagner Palace Car Co.
Opposite Grand Central Depot,
New York City.

"Dear Sir:

Referring to our conversation of the 27th, ult., I beg to state that if any extension of your Adirondack R. R. to Tupper Lake, or elsewhere is contemplated I should be glad to have an opportunity of submitting a proposition for the construction of the same. My associates and myself are in a position to begin work at once; to take a contract for any amount of work and to carry the same forward to your entire satisfaction.

Very sincerely yours,
O. M. CARTER."

Judge-Advocate: I also read from page 156 of the same book; (Reading)

"Subject, Capt. B. D. Greene.

"United States Engineer Office,
Savannah Ga., June 8, 1891.

"Mr. Wyllis Benedict,
Secy. &c. 160 Broadway, New York.

"Dear Sir:

Replying to your favor of the 5th, inst. concerning Capt. Greene, I beg to state that I have known him for a number of years and have found him scrupulously honest and trustworthy.

"He was formerly an officer of the Corps of Engr. U. S. A.,
but resigned some ten years ago to engage in more
1792 lucrative civil work. He was some years since connected
with a firm doing contract work for me. He is a man of first-rate professional and business ability, and has excellent financial standing.

Very truly,
O. M. CARTER."

Judge-Advocate: I read from page 330 of the book marked, "6, Capt. O. M. Carter, Personal" on the side.

"Subject, temporary absence from Station.

"United States Engineer Office,
Savannah, Ga., June 18, 1892.

"Brig. Gen. Thomas L. Casey,
Chief of Engineers, U. S. A.
Washington, D. C.

"General:

I have the honor to request authority to be absent from my station at Savannah, Ga., for a total period of five weeks, at such time or times between July 1 and Oct. 1, 1892, as will not interfere with any of my duties, retaining, during such temporary absence from Savannah, control of all the works under my charge and performing all of my duties as if I were at my station.

Very respectfully,
Your obedient servant,
O. M. CARTER,
Capt. Corps of Engrs. U. S. A."

Judge-Advocate: I offer in evidence and read from page 56 of the same book.

Mr. Blair, Colonel, I presume the same promise on your part to connect Mr. Rossiter?

Judge-Advocate: Not Mr. Rossiter, Mr. Hegeman.

Mr. Blair: Mr. Hegeman.

1793 Judge-Advocate: (Reading.)

"New York, Feb. 8, 1892.

"Mr dear Mr. Rossiter:

This will introduce to you Mr. W. W. Hegeman, whom I have associated with me and of whom I spoke to you to-day.

"It is possible that some work of construction may come up on some of the roads under Dr. Webb's control, in which case—remembering the letter you gave me to Dr. Webb nearly a year ago—I beg that you will kindly give Mr. Hegeman a letter to Dr. Webb, which will explain who he is, and secure for him an audience. Thanking you in advance for the courtesy, I am,

Very sincerely your,
O. M. CARTER."

Judge-Advocate: I call the attention of the Court to page 1552 of the record of the Court's proceedings, in which I say reading from the stock book of the Empire Construction Company, found among the papers and documents of the accused, and testified to by Col. Gillespie; I say, reading from the stock book, "Stock Ledger, Folio 21, Original No. 1, do 1, No. 10, Number of shares 100, to whom issued, W. W. Hegeman, dated September 10, 1891; from whom transferred, Capt. B. D. Greene, this certifies that W. W. Hegeman is the owner of 100 shares of the capital stock of The Empire Construction Company, transferrable, etc, City of New York, this 10th, day of September 1891. James E. Chandler, Secretary." The name of the president does not appear and across the face of it 'Cancelled, B. D. Greene, President'—"

Mr. Blair: And it appears, Colonel, does it not?—that that stock was never issued?

Judge-Advocate: The certificate is still in the book and across the face of it 'Cancelled.'

1794 Mr. Blair: And therefore, the certificate never was delivered.

Judge-Advocate: The certificate was found undelivered, and the value destroyed by having been cancelled; the name appears, and the interest appears; as I promised, I would make it appear to this Court.

Judge-Advocate: (Handing counsel for the accused papers) I need not prove that they came from my custody.

Mr. Rose: State it.

Mr. Blair: No.

Judge-Advocate: I state these are from the papers sent me be the War Department as among the effects of the accused.

Judge-Advocate: A telegram received from New York; (Reading) "To Capt. O. M. Carter, Savannah. Wire what hour you will be at St. James Hotel; will wait for you; important. Captain wants Fernandina check. W. W. Hegeman."

Judge-Advocate: That is dated the 9th, of the 10th, month, 1891.

Judge-Advocate: And these letters (Reading)

"The Empire Construction, 50 Broadway,
New York, Jan. 20, 1892.

"Capt. O. M. Carter,
Corps Engrs. Savannah, Ga.

"Dear Captain:

In answer of yours of the 18th, inst., beg to say that the latest advices are that Buell & Co. have secured a loan of $1,000,000.00 at 6% for one year, and intend to proceed with the construction of the line to Pt opposite Huntington. He notified me to shut off all negotiations here, and I conclude has made a trade with parties in Columbus, identified indirectly with the C P. R. R. who offered some time ago to 1795 go into the deal and divide profits on construction and coal lands equally with them.

"A short time ago Mr. Ramsey, Gen. Manager of the "Big Four" wrote me that his company was ready to enter into a proper traffic contract with the L & H road, and requested that I should submit brief of the points we desired covered; and on the 11th inst. I mailed him such information but have not yet heard from him in reply.

"I have Mr. Buell's promise to give me fuller information shortly. Until then the matter is in such tangled condition that I am at a loss to know whether it would be possible to regain control, or a substantial interest in the project again. Will advise you fully of any further development: there have been so many flashes in the pan out there that this last may be another one of them.

"It is reported that the Chicago and NorthWestern is going to extend its line from the Black Hills to the Pacific Coast. Such a line would involve the construction of very heavy and good paying work.

Truly yours,
W. W. Hegeman."

Judge-Advocate: I offer also this communication: (Reading)

"The Empire Construction Company, 50 Broadway,
New York, Jan. 22d, 1892.

"Dear Captain:—

I am just in receipt of a letter from Mr. Buell, who says, in relation to the loan he has arranged,—"Our loan is a straight loan of $1,000,000.00 for 12 months, on our notes,

with the bonds as collateral: no entanglements with any
1796 road; perfectly independent as a line &c.'

"He is to receive first payment on account Feby. 4th. It seems as if we might still be able to control the project by making some definite financial arrangement prior to that date.

"I do not know what conditions Buell has agreed to, covering commissions &c., to the parties who are to discount the notes.

"I will get all the information possible, so that in case you could come to New York within the next ten days, and there is still a chance to get the road, another effort can be made.

Very truly yours,

W. W. HEGEMAN.

"Capt. O. M. Carter,
Savannah, Ga."

Judge-Advocate: I offer in evidence and read: (Reading)

"B. D. Greene,
Consulting Engineer,
Room 107, No. 50 Broadway,
New York, Jan. 22, 1891.

"Dear Carter:

Yours at hand. I have seen Mr. Richardson, and he will see Mr. Depew soon and find out what he can. He says he knows they are going to build soon. He promises to let me know when time comes to make a proposal. Would it not be well for Mr. W. to write a line to C. V. and ask him about it, saying that he had a group of friends who wished to make a proposal when the time came. This would make it doubly sure. I can't find any book on bridges that is any good. Saxton don't know of any.

"Let me know if anything is done as I suggest above.
1797 When Mr. Bolles returns I will find out from him.—if he knows a good book.

Yours truly,

B. D. GREENE.

"I shall be back here on Feb. 20, and we can see if anything can then be done about the Utica business; meanwhile I think my suggestion a good one."

JAMES L. GALLAGER, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination.

Questions by the Judge-Advocate.

Q. What is your full name, Mr. Gallager?
A. James L.
Q. William J.?
A. James L.
Q. Where is your residence?
A. Savannah, Georgia.
Q. Have you worked for the Atlantic Contracting Company of recent years?
A. Yes, sir.
Q. During what period?
A. From 1892 to 1895, and from 1896 to 1897.
Q. How late in 1897 did you work for them?
A. September.
Q. In what capacity?
A. As clerk and paymaster.
Q. You kept their books and accounts?
A. Yes, sir.
Q. During the year 1893, were you ever sent out to pay off the laborers and foremen?
1798 A. Yes, sir.
Q. Who sent you?
A. E. H. Gaynor, or John F. Gaynor.
Q. Where did you go?
A. To Augusta, Georgia.
Q. What work was going on there?
A. There was work going on at the river, above Augusta.
Q. Above Augusta?
A. Yes, sir.
Q. Who had the contract?
A. I could not tell you.
Q. Who was in charge there?
A. Mr. Wheeler.
Q. Do you know William Walsh or Welsh?
A. Yes, sir.
Q. Was he there?
A. No, sir.
Q. Do you know where he was at that time?

A. I could not well say; he was on some island around here, cutting brush.
Q What was his business?
A. He was superintendent of a brush camp, or mat camp.
Q. A mattress camp?
A. Yes, sir.
Q. Who was inspector above Augusta on the river, when you went there?
A. Mr. Austin, Mr. W. G. Austin.
Q. Did you take any funds with you?
A. Yes, sir.
Q. How much?
A. Five hundred dollars.
1799 Q. For what purpose?
A. For paying off laborers and any other bills that would be against the company.
Q. Did you pay off?
A. Yes, sir.
Q. Paid off that amount?
A. Yes, sir.
Q. Had any payments been made that were not by you?—for the pepole for whom you were working?
A. I used to pay off every Saturday.
Q. But above Augusta, at this same point?
A. No, sir, I never paid off anything up there.
Q. Was there any other money called for for that work above Augusta?
A. None, except the labor and some of the accounts paid in Augusta after I paid.
Q. Subsequently?
A. Yes, sir.
Q. How much?
A. I could not exactly say. The $500 was pretty well taken up for the sole business of labor and accounts in Augusta.
Q. Was the money so required to make final payment up there, and settlement of all accounts?
A. I could not tell you.
Q. What date was that, do you remember?
A. The 19th, of June.
Q What year?
A. 1893.
Q. You were employed by the Atlantic Contracting Com-

pany up to the time that work was suspended under the existing contract, were you?

1800 A. Yes, sir.

Q. You left here on the 19th, for Augusta?

A. Yes, sir.

Q. You paid up to what date?

A. Well, I paid to the 19th; I made a memorandum here in my book when I went up there; I paid all bills up to the 21st, or the 22d. I went there two or three times; they were not ready the first time, and I had to go up again.

Q. During the present contract, when money was wanted, to whom was application made?

A. Well, to Capt. B. D. Greene.

Q. And from whom were funds received?

A. Well, I used to see some checks from Capt. B. D. Greene; I never have seen all of them; I have seen checks from Capt. Greene.

Q. What was done with them?

A. I could not tell.

Q. Do you know where they were deposited for collection?

A. I do not.

Q. Where was the account of the Atlantic Contracting Company kept here in Savannah?

A. The Southern Bank of the State of Georgia.

Q. Who signed the checks upon that bank?

A. E. H. Gaynor, Treasurer.

Q. Was there but one account?

A. One account; that was all.

Q. Was the signature of the president of the Atlantic Contracting Company also required on the check?

A. No, sir.

Q. Who filled out those checks?

A. I did, sir.

1801 Q. You were employed by them during what is called the big contract, were you not?

A. Yes, sir.

Q. Who furnished the funds for paying the expenses here at that time?

A. John F. Gaynor furnished funds for the first part of the contract; I don't know who furnished them afterwards.

Q. All funds received for outside, were from John F. Gaynor?

A. Yes, sir; up to the time E. H. Gaynor came to Savannah.
Q. That was for the payment of expenses down here?
A. Yes, sir.
Q. And you filled out the checks yourself at that time?
A. Yes, sir.
Q. And during the present contract, the checks for expenses down here were drawn out by you?
A. Yes, sir.
Q. About how much did you draw out during the present contract?
A. Some eighty odd thousand dollars.
Q. Were they used to pay anything except expenses for Savannah Harbor?
A. Yes, sir; some of that went into the Fernandina account.
Q. To what extent?
A. I could not exactly tell the amount of money; about four or five thousand dollars, I guess it was.
Q. Do you know what it was used for, what purpose, did you look at the vouchers?
A. There was some stuff, such as lathe yars and stock.
Q. You mean live stock?
A. Yes, sir.
Q. Up to what date was that eighty thousand dollars furnished?
1802 A. Up to the first of September; the 15th, of August or the first of September.
Q. Did you notify any person of the estimates of the amount of money due the contractor each month?
A. I used to send telegrams and sometimes write letters to Capt. Greene.
Q. What was the form of notification?
A. I used to say to him in the telegram or letter, that the estimate was fifty this month.
Q. Or whatever the amount might be?
A. Fifty or forty or thirty five or whatever the amount was.
Q. Do you know what that meant?
A. I do not.
Q. You were present at the trial of the case of James B. Brown against the Atlantic Contracting Company?
A. Yes, sir.

Q. Were you then bookkeeper for the company?
A. Yes, sir.
Q. What was the suit for?
A. The suit for 60 cents a car deducted by Col. Gaynor from Col. Brown for small rock.
Q. Which had been deducted, he sued for the reduction?
A. Yes, sir.
Q. Did you hear Capt. Carter testify on that trial?
A. Yes, sir.
Q. Can you remember what his testimony was?
A. My memory of the testimony of Capt. Carter was that the rock that the specifications called for,—I don't know whether it it was 25 or 15 pounds,—if it was under the specifications the rock went down the river, but was not paid for by the Government; the Government did not pay for rock that was under the specifications.
1803 Q. Where was your office here, the office of the Atlantic Contracting Company?
A. The first contract it was at the foot of Abercorn street.
Q. How many room did they have.
A. There were two rooms there.
Q. How were they furnished?
A. Just office furniture.
Q. They had a safe?
A. Yes, sir.
Q. And type-writer?
A. No sir.
Q. They did not have a type-writer?
A. No sir.
Q. Do you remember the price of stone paid Brown under that contract by the Atlantic Contracting Company?
A. I think it was sixty cents a ton; some was seventy cents, and then it was sixty cents, afterwards it was reduced.
Q. Under that contract from May, 1894, to July 31st., 1895, what was the price paid?
A. Sixty cents.
Q. That was the stone in relation to which the suit had been instituted?
A. Yes sir, sixty cents.
Q. Did they at any time have a type-writer in their office?
A. Never, sir, to my knowledge.
Q. Who attended to the stocking of their office with stationery in the beginning of the contract in 1892?

A. Mr. Connolly.
Q. What Connolly is that?
A. M. A. Connolly.
Q. That is the Connolly who was employed in the engineer's office here?
1804 A. Yes sir.
Q. And was in the employ of the Government at that time?
A. Yes sir.

Cross-Examination.

Questions by Mr. Charlton.
Q. Mr. Gallager, you were clerk and book-keeper of the Atlantic Contracting Company?
A. Yes sir.
Q. What was your salary?
A. My salary when I first started was seventy five dollars a month.
Q. And afterwards?
A. It was increased twenty five dollars more and that made it one hundred dollars a month.
Q. Were you largely in the confidence of that corporation?
A. I dont think so.
Q. Do you mean to suggest to the Court that $500.00 was all that was paid for the Augusta work?
A. That is all I paid.
Q. I want to know if your idea in connection with that testimony was that was all that work cost this Company? As far as you know that was all it cost it?
A. As far as I know that is all it cost it.
Q. As far as you know, all the work in the Savannah River and Cumberland Sound cost $80,000.00?
A. $80,000.00 from the contract of 1896 and 1897 for Cumberland Sound and Savannah Harbor.
Q. Savannah Harbor and Cumberland Sound?
A. Some of that money went to Fernandina.
Q. That was only $5,000.00?
A. $5,000.00 something like that.
1805 Q. Your idea is that is all it cost?
A. Yes, sir.
Q. And Savannah Harbor?

A. Part of the $80,000.00 went to Fernandina.
Q. That was $5,000.00; that is Cumberland Sound?
A. About $5,000.00
Q. Fernandina is Cumberland Sound?
A. Yes sir.
Q. $75,000.00 for Savannah Harbor and $5,000.00 for Cumberland Sound?
A. I didnt say the exact amount, I said Eighty odd thousand dollars, and part of that went to Fernandina.
Q. The question of one or two thousand dollars either way: that is your idea, that is your knowledge of what it cost?
A. That is all I know it cost.
Q. That is all you do know it cost?
A. That is all I know it cost.
Q. When did you leave the employment of the Atlantic Contracting Company?
A. The first of September, 1897.
Q. Did you leave of your own volition or were you discharged?
A. I was discharged.
Q. You are now suing them?
A. Yes sir.
Q. What is your present employment?
A. The Rourke & Mitchell Sewerage Company.
Q. When did that start?
A. The first of December something like that.
Q. You were discharged in September and got employment in December?
A. Yes sir.
Q. What were you doing in the interval?
1806 A. From the 14th., of September to the 16th., of November I was quarantine inspector at Rincon.
Q. And from the 16th. of November?
A. I was not doing anything until I went to John Rourke.
Q. Literally nothing?
A. No, sir.
Q. You have not been doing work for the prosecution in this case?
A. No, sir.
Q. Who went for the witness Parker and brought him up?
A. I met him.
Q. Is that all you did?
A. That is all.
Q. You just met him?

A. Yes sir.
Q. What did you do with him?
A. I asked him about rock.
Q. Why should you be asking him about rock? What did you have to to do with it?
A. There was a question about small rock.
Q. Who made the question?
A. Mr. Brown in the first place made the question about the small rock.
Q. That case has been tried by a jury, has not it?
A. Yes, sir.
Q. Who introduced you to the question?
A. Capt. Gillette asked me if I knew who discharged the rock.
Q. How did you come to go to Capt. Gillette?
A. He sent for me.
Q. He had a talk with you?
A. Yes, sir.
Q. Did he ask if you could see Mr. Parker?
1807 A. Yes, sir.
Q. You did see Mr. Parker?
A. Yes, sir.
Q. And talked with him about the rock?
A. Yes, sir.
Q. Carried him up to see Capt. Gillette?
A. He came up to see Capt. Gillette.
Q. Did you carry him up?
A. No, sir.
Q. Did he go there at your instance?
A. I told him Capt. Gillette wanted to see him.
Q. Do you spend your time watching the office of the attorneys of the accused?—to see who went up there?
A. No, sir, but a great many of those are watching me; I mean some of the defendant's witnesses are watching me going up to Capt. Gillette's office.
Q. Why should they watch you?
A. I don't know.
Q. They had a pretty shrewd idea you were watching them?
A. No, sir.
Q. As a matter of fact, you spend a good deal of your time out here on that corner?
A. I had a right to be there, if I wanted to.
Q. It is a sunny spot?

A. It is a sunny spot, yes, sir.

Q. Did you stay in the court house during the whole trial of the Brown case?

A. Yes, sir.

Q. Your idea is that Capt. Carter testified that rock that came below the sizes of the specifications, did not go into the work?

1808 A. Yes, sir.

Q. Tell us what he said.

A. Capt. Carter said, according to my memory, that rock that was below weight, according to the specifications, was put in the work, but never paid for by the Government.

Q. Do you remember how many times Capt. Carter said he had been down there?

A. No, sir.

Q. Did he testify about that at all?

A. I think he said he was down there several times.

Q. Did he say how many times?

A. No, sir.

Q. Did he say whom he went with?

A. He went down one Sunday with Col. Brown, down to the rock wharf.

Q. Now, Mr. Gallager, didn't Capt. Carter state this, that if that rock was below size, that of course, the Government would not pay for it, if it was rejected?

A. No, sir.

Q. Then you and Mr. Colding differ.

A. Well, I don't understand it that way.

Q. Your relations with Mr. Connolly are very pleasant, are they not?

A. Yes, sir.

Q. Entirely so?

A. Since he came back from Nicaragua he is not as friendly as he has been.

Q. Then you are not as friendly?

A. Not since he came back from Nicaragua.

Q. Since he came back from Nicaragua he is putting on airs?

A Put on airs, yes, sir.

Q. You are still suing the Atlantic Contracting Company?

1809 A. Yes, sir.

Q. Bringing a new case every month?

A. I have brought one case, but I don't know whether my lawyer has brought any more.
Q. Is it your idea to bring one every month?
A. Yes, sir.
Q. And make it lively for them?
A. Yes, sir.

Re-direct Examination.

Questions by the Judge-Advocate.
Q. That $500 you took to Augusta was for the spring work?
A. I went there in June 1893; I don't know what it was for.
Q. It was for work done the previous fall?
A. The men were working when I went there.
Q. I refer now to the fall of the previous year.
A. I don't know, sir.
Q. You don't know anything about it?
A. I don't know anything about that; I know I got $500 and went up there and paid the bills.
Q. Any payments made the previous fall for work there, you know nothing about?
A. No, sir.
Q. Mr. Wheeler was superintendent?
A. Yes, sir.
Q. Who was Mr. Wheeler?
A. I don't know anything, except he is Mr. Wheeler; he has been superintendent ever since I have been employed by the Atlantic Contracting Company; Myron J. Wheeler.
Q. Whom did you get that $500 from?
1810 A. Edward H. Gaynor; I got the check from him; I got the money from the Southern Bank.
Q. You got the check cashed yourself?
A. Yes, sir.
Q. When did you first speak with me in relation to this case?
A. Well, about a week after you came down here—no I never spoke to you until here, the other day; I met you about a week after you came down here.
Q. When did you speak to me first in relation to this case?
A. Two or three days ago, I think, sir.
Q. Have you been employed by any one to seek out testimony, or witnesses to be used in the prosecution of this case?
A. No, sir, I have not.

Q. Have you been approached by parties on the other side?

A. Yes, sir; Mr. Gaynor approached me and wanted to know if I would tell him what Capt. Gillette said to me, and asked me what I was going to tell Capt. Gillette; I told him I would tell him neither one or the other.

Q. You told him you would not tell whom, Mr. Gaynor?

A. I would not tell Mr. Gaynor—yes, sir.

Second Cross-Examination.

Questions by Mr. Charlton.

Q. You would tell Capt. Gillette, but would not tell Mr. Gaynor?

A. I never told Capt. Gillette; he never asked me; Ed Gaynor heard I was going to see Capt. Gillette, and he wanted to know if I would tell him what Capt. Gillette told me; I told him I would not, and he said that little difficulty between the company and I would be all right; he meant the suit I had against him.

Here the Court at 1-5 o'clock P. M. takes a recess until 1.20 o'clock P. M., and Reporter, G. T. Cann was relieved by Mr. Tarver.

1811 At 1.20 o'clock, P. M. the Court reassembled, pursuant to recess.

Present:

All the members of the Court and the Judge-Advocate; The accused, his counsel, and the Reporter, W. O. Tarver, were also present.

Judge-Advocate: I now offer in evidence the statement testified to by Mr. Harris, who was the assistant superintendent of the Plant System of Railroads on the docks here, the other day, and the Court will remember he failed to testify as to the receipts of cars of stone on Mr. Brown's account during the month of July, 1895. The counsel for the defense kindly consented that without returning to the stand, he should furnish it, and he has so furnished it. I now offer it in evidence, and it will be attached to the record, marked Exhibit 312.

ARTHUR S. COOPER, a witness for the prosecution, previously duly sworn, testified as follows:

Direct Examination by the Judge Advocate.

Q. In testifying on the last occasion, you testified, you approximated, said from your memory, as nearly as you could, the number of cubic yards of stone that were placed in the works in regard to which you were testifying, but that you would get the figures, did you get them?

A. Yes; I gave you a memorandum the other day.

Q. (Exhibiting paper) This is the memorandum?

A. That is a memorandum of the total number of cubic yards placed in the work between May, 1894 and July, 1895, both inclusive, which was 66,067.18 cubic yards, and of this 2,990.13 cubic yards was ballast rock, leaving 63,077.05 cubic yards of Florida rock.

1812 Q. I hand the witness the exhibit 312, which I have just submitted in evidence, and ask him if he added up those columns of weights of stone?

A. Yes, sir, I in connection with one of the clerks in the office; we computed the total weights furnished by the railroad company between those dates.

Q. The statement of weights on those separate sheets?

A. Yes, sir; we added up each page, and each page by itself.

Q. What did you make the grand total?

A. 118,186,190 pounds.

Q. How many tons?

A. 59,093.05 tons.

Q. Short tons or long tons?

A. Short tons.

Q. Tons of 2,000 pounds?

A. Tons of 2,000 pounds.

Q. And you testified that there was 63,077.05 cubic yards of Florida stone?

A. Yes, sir.

Q. That was stone received from the Brown contract?

A. From the Atlantic Contracting Company, furnished by Brown.

Q. From the Atlantic Contracting Company; Florida stone?

A. From the Atlantic Contracting Company; yes, sir.

Q. Furnished by Brown, as you understood?

A. Yes, sir.

Q. How much would it require to make a cubic yard in weight of that Florida stone?

A. Taking the total number of yards and the total pounds furnished by the railroad company, it gives a trifle less
1813 than 1,900 pounds per cubic yard; leaving out some fractions, it would be 1,900 pounds.

Q. And what weight would a cubic yard of stone be of the specific gravity of 2.4?

A. Between 2,350 and 2,410.

Q. Making between 400 and 500 lbs. difference as between the rock delivered and that which would have been delivered had the stone been 2.4 specific gravity?

A. Yes, sir.

Cross-Examination by Mr. Blair.

Q. How did you figure out those two weights; the 1,900 lbs. per cubic yard and the 2,400 lbs. per yard?

A. I took the total weight furnished by the railroad company; that I have assumed as being their actual weight as weighed on the scales, and I have taken my measurements during that same period, which was actually placed in the work, and I have divided the number of yards into the number of pounds, which gave the number of pounds per yard

Q. Now, how do you get the other one?

A. The other one I arrived at in two ways; that is the reason I put in two figures. The larger figure there is determined from an experiment which I made at Fernandina some years ago. That was by displacement of a barge of stone. I measured very carefully in probably a dozen or fifteen places on the lighter while the stone was on the lighter; that is down to the water's edge, and then I very carefully measured the stone, and after it was discharged I re-measured that barge, getting the height all around the lighter, and by computing the weight of water displaced, it would give me the actual weight of the stone on the lighter, and dividing that by the number of cubic yards on the lighter, by my measurement
1814 it would give me the number of pounds of stone per yard, which, in that case, was 2,650 lbs. That was granite. Granite has a specific gravity of 2.65. The Judge-Advocate asked me of 2.4, and I reduced that by that propor-

tion, which would make 2,410. The other figure I gave you was purely theoretical—,one which I determined by the specifications—,150 lbs. to the foot; multiply that by the number of feet and it would give 4,050 lbs., and the percentage of voids is 42, I assumed, and subtracting the percentage of voids, leaves me the figure I give, 2,350.

Q. If you should subtract 5 per cent. for voids, what would you get?

A. Five per cent?

Q. Yes.

A. Would not get very much more.

Q. You would get 4,000 lbs. to the cubic yard, wouldn't you?

A. Yes, about that; a little more than that.

Q. Which is true, 42 per cent. of voids, or 5 per cent. of voids?

A. 42 per cent. is also the result of some experiments which I made—

Q. We will not go into that now. Which is true, the 42 per cent. of voids, or the 5 per cent. of voids?

A. The 42 per cent. I believe to be as near the truth as can be obtained

Q. How did you get 150 lbs. to the cubic foot?

A. That is the specifications; 2.4 specific gravity makes 150 lbs. of solid stone; 62 1-2 lbs. for water makes 150 lbs. to the solid foot.

Q. That is, figuring no holes in the stone?

A That is solid stone; then I allow for voids at 42 per cent.

Q. What would you call voids; do you mean the porosities in the stone?

A. No, I mean the interstices between the stone.

Q. And not the porosities between the particles or lumps of stone?

1815 A. No, I did not take that into consideration at all; that was taken into consideration in the specific gravity.

Q. How is that last?

A. The porosity would come in in the actual weight of the solid foot.

Q. In order to get the weight, then, per cubic foot of this substance, you multiplied it by its specific gravity, 2.4. or rather you multiplied it by the weight of a cubic foot of water?

A. This last figure was purely theoretical; I assumed the specifications, and figured on the specifications.

Q. Then, according to that answer, I suppose you would get the weight of a cubic foot of any substance by multiplying the specific gravity of that substance by the weight of a cubic foot of water; is that right?

A. Yes, sir.

Q. And you think that gives the correct result, do you?

A. That is what specific gravity is for.

Q. Now is that right; say yes or no; is it right?

A. I think it is.

Q. About these voids, did you say 42 or 44 per cent. of voids?

A. I said 42.

Q. Did you ever report it as 44 in Florida rock?

A. Possibly so.

Q. Which would be right?

A. The voids, of course, is an uncertain thing; it is something that may vary; one barge load might be 42 per cent. and another be 46; that is an uncertain quantity.

Q. You testified the other day that the fragments of rock weighing 25 lbs. and under would not fill in more than 5 per cent. of the voids?

A. No; I did not say that.

1816 Q. How did you put it?

A. I said that I thought that if the small rock of 25 lbs. and under was placed in among the other rock, that it would probably swell the measurement of the other rock about 2 1-2 per cent., provided there was 5 per cent. of the small rock.

Q. That is it; that only 2 1-2 per cent. of the fragments weighing 25 lbs. and under, that is the way you stated it, would go into the voids, and the other 2 1-2 per cent. would not?

A. You asked me to make an estimate, and that was the estimate I made.

Q. The other 2 1-2 per cent. would not go in?

A. Two and one-half per cent. would be in the voids, and the other 2 1-2 per cent. would actually swell the measurement by that amount.

Q. You said in your testimony fragments weighing 25 lbs. and under in the average load of this Florida stone; would your answer be any different if the question were asked

you as to the fragments under 25 lbs. in the average load?

A. That is, considerably under, you mean?

Q. No, not that are considerably under 25 lbs.,—all that under 25 lbs?

A. That is exactly what my statement was based on. If the 5 per cent. of stone was placed in the work, it would swell the measurement 2 1-2 per cent.

Q. You said 25 lbs. and under?

A. Yes, sir; 25 lbs. and under.

Q. The specifications allow fragments of 25 lbs. to go in?

A. I see what you mean. I did not mean to say 25 lbs. I meant to say any stone that fell below 25 lbs.

Q. That would go into the 2 1-2 per cent?

A. Yes, sir; I did not mean to include the stone weighing 25 lbs.

Q. In the average load of this Florida stone what be-
1817 comes of the other 39 1-2 per cent. of void space?

A. What do you mean?

Q. You say there are 42 per cent. of voids in this stone on the barge?

A. That would leave 58 per cent., would it not, as occupied by the stone?

Q. What becomes of that other space between the 2 1-2 and the 42 per cent. that you testified existed?

A. You have that pretty badly mixed up.

Q. Maybe you can enlighten me.

A. I think I can. If the voids was 42 per cent. and the balance of that space taken up by small stone, that would leave 22 per cent. of the voids not filled up.

Q. Do I understand you to say these fragments would fill half of that void space?

A. That is the estimate I made. It would fill half of it,—the actual occupied space—,that would have been occupied by the large stone if the small stone had not been on the barge; that is what I mean.

Q. It seems to me, then, we have got some percentages lost?

A. How?

Q. The fragments weighing less than 25 lbs. in the average barge load you say constituted 5 per cent. of the entire load; that is true?

A. Yes, sir.

Q. You say that in the piling of that stone upon the jetty, 2 1-2 per cent. would go into the voids?

A. Yes, sir.

Q. Two and one-half per cent. of that would go into the voids?

A. Two and one-half per cent. of it, leaving 2 1-2 per cent. of the space that is actually on the lighter as being occupied by small stone.

Q. And the 2 1-2 per cent., then, of the whole lighter
1818 load would be measured and paid for?

A. It is just the same as 2 1-2 per cent.

Q. Two and one-half per cent. of the lighter load would be measured and paid for?

A. Yes, sir.

Q. You say that on that entire lighter load of Florida rock the void spaces aggregated 42 per cent. of the entire volume; is that right?

A. I see what you are driving at now. My estimate of voids—

Q. Is that true?

A. No.

Q. Then what did you mean by your testimony just now?

A. I mean that the voids actually in that lighter load, as it was actually delivered, the small and large combined, I estimated it at 42 per cent. regardless of the small stone being in there. If it was all large stone, probably the per cent. might be larger. In other words, that reduction which you have assumed was made by putting the small stone in there, I do not admit in my percentage.

Q. If there are 42 per cent. of voids,; that is, if in that entire volume 42 per cent. is occupied by air,—that is what you mean by void spaces?

A. That is what I mean.

Q. If you could fill in these air spaces accurately, the measurement would not be increased, would it?

A. No, sir; but the weight would be increased.

Q. I am not talking about the weight; I am talking about the measurements. The measurements would not be increased?

A. No, sir.

1819 Judge-Advocate: I call the attention of the Court to page 15 of the printed specifications,—Specification XI. The Court will remember that the accounts current of the accused are before the Court, showing that no return has ever

been made by the accused of the amount referred to in the specifications as having been "received from one Alfred Hirt, for the United States, on or about December, 1896, the sum of one hundred and thirty-two dollars and ten cents.

JOHN W. O. STERLY, a witness for the prosecution, previously sworn, recalled, testified as follows:

Direct Examination by the Judge-Advocate.

Q. (Handing witness paper) Do you recognize that telegram?

A. Yes, sir.

Judge-Advocate: I offer in evidence and read telegram dated, "Washington, D. C., April 25th, 1896. To Capt. Carter, Southern Bank Building. Authority is granted to use Toccoa in raising steamer Santee, provided there is no private wrecking plant available for such work. A. MacKenzie, Engrs."

Q. Have you the telegram to which this is a response?

A. Yes, sir.

Judge-Advocate: The request for the authority granted, is indicated, is found on page 386 of the letter book, "Improving Ocmulgee River, Ga.," and is as follows:

"U. S. Engineer Office,
"Savannah, Ga., April 25, 1896.

General Craighill,
Chief of Engineers, Washington, D. C.

Steamer Santee is sunk in channel of Ocmulgee Rvier. Owner wishes her raised by snag-boat Toccoa, and agrees to pay all expenses. Please wire authority for use of boat.

"Gov't Rate."

CARTER,
Engrs."

Q. (Handing witness book) What is that book?

A. Miscellaneous No. 25.

1820 Q. Look at page 273?

A. (Witness handed Judge-Advocate book at page indicated)

Judge-Advocate: I offer in evidence and read from page 273: (Reading:)

"Subject: Diving outfit.
"U. S. Engineer Office.
"Savannah, Ga., May 25th, 1896.

"Mr. Alfred Hirt,
"Steamer Santee,
Savannah, Ga.

"Dear Sir:

"The diving outfit which you were required to have here "on Monday the 25th inst., has not yet been received. I have "to inform you that the total expenses of the boat and crew "from May 25th until the diving outfit is received from you "will be charged to you. I regret that you have not been "appreciative enough of the favors shown you to make an "attempt to comply with repeated requests from this office "to return the diving outfit which was loaned to you.

"Very respectfully yours,
"O. M. CARTER,
"Capt. Corps Engineers U. S. A."

Q. (Handing witness paper) Is that from the files of the office?

A. Yes, sir.

Q. Received when?

A. On June 3, 1896.

Judge-Advocate: I offer and read in evidence: (Reading:)

"Savannah and Ocmulgee Line Steamers
"Savannah and Hawkinsville, Ga.
"Savannah, Ga., June 1st, 1896.

1821 "Capt. O. M. Carter,
"Savannah, Ga.

"Dear Sir:

"Your letter of May 29th to hand. In reply, I indeed appreciate your favors shown in raising the Santee, and favors I will never forget, for I needed them.

"As to the diving outfit, I will write to my son, Simpson A. Hirt, at Abbeville, Ga., to forward same as quick as possible. The fact is, when Capt. Burnett came a second time, May 21st, I left the whole matter in his hands and that of my son, S. A. Hirt.

"Business called me home, and I surely thought the two made arrangements to send the outfit to Savannah again. I

will take the matter in hand at once, and make the haste, as quick as possible.

"Yours very truly,

"ALFRED HIRT."

Q. Look at page 303, Miscellaneous?

A. (Witness hands Judge-Advocate book at page indicated.)

Judge-Advocate: I offer in evidence and read from the same book: (Reading:)

"Subject: "Diving outfit, expenses, etc.

"U. S. Engineer Office.

"Savannah, Ga., June 6, 1896.

"Mr. Alfred Hirt,

"Greencastle, Indiana.

"Dear Sir:

"It became necessary to send a messenger for the diving "outfit, your promise to return it when called for not having been observed. The expenditures on your account have been $132.10. A sight draft for that amount on you, at the 1822 First National Bank, Greencastle, Indiana, has this day been drawn, which I trust you will immediately honor.

"Very truly yours,

"O. M. CARTER,

"*Capt. Corps of Engrs. U. S. A.*"

Then on page 318: (Reading)

"Subject: Remittances.

"U. S. Engineer Office.

"Savannah, Ga., June 16, 1896.

"Mr. J. F. Hirt,

"Baldwin, Miss.

"Dear Sir:

"On the 6th inst., the following letter was sent to your father at Greencastle, Indiana. The draft referred to therein was drawn by J. W. O. Sterly, Chief Clerk, to whom your check should be made payable. 'It became necessary to send a messenger for the diving outfit, your promise to return it when called for not having been observed. The expenditures on your account have been $132.10. A sight draft for that amount on you, at the First National Bank, Greencastle, Indiana, has this day been drawn, which I trust you will immediately honor.'

"The draft in question has been returned with the information that your father sailed for Europe the Saturday preced-

ing its receipt, and that you were his partner. As this money has been paid out on your father's account I hope you will send immediately a check for the amount, made out as requested.

"Very respectfully fours,
O. M. CARTER,
"*Capt. Corps Engineers U. S. A.*
"J. W. O. S.

1823 Q. (Handing witness paper) That is a letter found in the files of the department?

A. Yes, sir.

Judge-Advocate: I offer in evidence: (Reading)

"Mobile and Ohio Railroad Co.
Baldwin, Miss, Station,
"June 20th, 1896.

"Capt. O. M. Carter,
"Savannah, Georgia.

"Dear Sir:

"Yours of the 16th inst. to hand; contents noted, and in reply: Father is now in Europe, and as I am only attending to his business while he is abroad, and not his partner,—I am not familiar enough with the nature of your claim to settle it now. But would advise you to wait until his return for a settlement, or send me an itemized account of expenses properly signed and sworn to.

"I think $132.10 is rather a heavy bill of expenses, and not knowing much about this case, will kindly ask you to enlighten me on this subject all you can, as I must be responsible to my father for every act.

"Yours very truly,
"J. F. HIRT."

Q. Look at Miscellaneous Book No. 26: Turn to page 198.

A. (Witness handed the Judge-Advocate the book at page indicated.)

Judge-Advocate: I read in evidence from page 198 Miscellaneous Book No. 26: (Reading)

"Subject: Sunken Steamer Santee, and money due on same.

"U. S. Engineer Office.
"Savannah, Ga. Oct. 20, 1896.

1824 "Mr. Alfred Hirt,
Greencastle, Indiana.

"Sir:

"In the Spring of this year, the Steamer Santee owned by you struck a snag and sunk in the Ocmulgee river below Abbeville. Permission was granted you to use the U. S. snag-boat Satilla to try to raise her, provided you would bear the expenses connected with the work. In addition to the boat you were allowed the use of a complete diving outfit owned by the United States. Before the work was completed, you left without paying for it, the balance due by you being $132.10. This amount is made up of wages of the crew and expenses connected with the return of the diving outfit to Savannah, etc. The money was paid out on your account at your urgent request, and although various efforts have been made to secure reimbursement of this amount, such reimbursement has not yet been made.

"You came to me represented to be an honest and an honorable man; if such be true, you will immediately pay the amount due by you, and thus avoid any further action in the matter.

"Very respectfully yours,
"O. M. CARTER,
"Capt., Corps Engineers, U. S. A."

"Copy sent to Mr. J. F. Hirt, Baldwin, Miss."

Q. (Handing witness paper) This is from the original files?

A. Yes, sir.

Judge-Advocate: (Reading)

"Savannah and Ocmulgee Line Steamers
"Savannah and Hawkinsville, Ga.
"Greencastle, Indiana, November 6th, 1896.

"Capt. O. M. Carter,
1825 "Corps of Engineers, Savannah, Ga.

"Dear Sir:

"Your letter of October 20th is before me. Also letters of June 16th and 23rd to my son, J. F. Hirt. Contents are carefully noted. In reply: I indeed appreciate the favor you granted me in let me have the Government snag-boat last Spring; and I have certainly come up to my promise, as I made a check to Mr. J. W. O. Sterly of $300.00 (or over) as

I have it not with me now. According as you directed me before the boat left Savannah, Ga. And after the boat had returned a week or two, I came to your office in Savannah and settled according to your orders with Mr. J. W. O. Sterly, and made him a check in full to my home bank for $246.29, and can produce both checks when I come to Savannah.

"Yes, I represent myself to be a honest and honorable man, and my dealing in the South and elsewhere will give me credit as such as much so as the writer of the letter to me of October 20th.

"Now, in conclusion I ask you to send me a statement of the expenses that have occurred from the time you let me have the Government snag-boat till it returned to Savannah May 10th. I will know and must know. As a honest and an honorable man as you term it in your letter.

"Very respectfully yours,

"ALFRED HIRT."

Judge-Advocate: I read from page 302 of Miscellaneous No. 26, the book identified by the witness: (Reading)

"Subject: Expenses of raising Santee.

"U. S. Engineer Office.

"Savannah, Ga., November 17, 1896.

1826 "Mr. Alfred Hirt,

"Greencastle, Indiana.

"Dear Sir:

"Replying to your letter of the 6th inst., I have to inform you that there were received from you two drafts, one for $300 and one for $246.29, (on which there was a discount of 62 cents) making the total net sum of $545.67. Vouchers for this sum, with the exception of $12.38 were shown to you, —the balance, namely, $12.38 in cash, is still held to pay a wood bill which is due but has not yet been presented.

"The diving outfit upon which the value of the boat depended was not returned by you as agreed, and you were informed that the expenses of the boat must be charged to you until the outfit was returned. It being almost impossible to receive any reply from you, I was obliged to send a man to the Ocmulgee River and get the diving outfit and pay his expenses and the transportation of the outfit back to Savannah. These expenses, justly and properly chargeable to you, amount to $132.10, and, as stated above, the money was paid out on your account and at your urgent request and upon the representa-

tion at this office that you were trustworthy and could be relied upon to pay the expenses incurred by you.

"Yours truly,

"O. M. CARTER,

"Capt., Corps Engineers, U. S. A."

Q. (Handing witness paper) That also is a letter from the public files,—an original letter?

A. Yes, sir.

Judge-Advocate: I offer and read: (Reading)

1827 "Savannah and Ocmulgee Line Steamers

"Savannah and Hawkinsville, Ga.

"Greencastle, Ind., Dec. 5th, 1896.

"Capt. O. M. Carter,

"Savannah, Ga.

"Dear Sir:

"Your letter of Nov. 17th came to its destination in due time. Have been absent from home, hence my delay. In reply:—It is a fact that I have made a settlement for the Government snag-boat according to your orders, with Mr. J. W. O. Sterly, May 20th, giving my check for $246.29, in full of all claims to that date. Now in regard to the diving outfit, Capt. Burnett, when going down the river with snag-boat, left part of it at Lumber City, Ga., for me, which I received several days afterwards. The large wheel of the diving pump he took along down the river as far as Darien, and sent same to Abbeville by express, where same was held in express office for several days, probably a week, before I had notice of same. I made about same statement to you, when at your office May 20th, and you promised to let me have the outfit till I was through, and in a very few days afterwards you sent a man after the pump to Abbeville and took the pump from the steamer Santee, where it was sunk. And now you come and charge me $132.10, as per your letter, which I deem imposing on me. Will you kindly look into the matter, what the fare will be to Abbeville and returning to Savannah, also the number of days it will take to make the trip, also the freight and expenses to bring the pump to Savannah, also the gentleman's wages for making the trip, which is all there could be in the case, from the way you present it. As to the Government snag-boat, I had nothing to do whatever when same was returned to you by Capt. Burnett. Let me hear from you
1828 as I do not think you want to impose any such bill as you present in your letter of November 17th.

"Yours truly,

"ALFRED HIRT."

Judge-Advocate: I offer and read from page 401 of Miscellaneous Book No. 26: (Reading)

"Subject: Expenses of raising Santee.

"U. S. Engineer Office.

"Savannah, Ga., Dec. 8, 1896.

"Mr. Alfred Hirt,

"Greencastle, Ind.

"Dear Sir:

"Replying to your letter of 5th inst., I have to state that the snag-boat could not be used until the receipt of the diving outfit from you, and the expenses not only of sending after the outfit which you failed to return when requested, but the expenses of the boat during the time you had that outfit, should be paid by you. You intimate that the outfit was not desired by you, but was sent back without authority by Mr. Burnett. If this is true the expenses should, of course, be borne by Mr. Burnett; but if it is not true, and you requested the outfit to be sent to you, as I believe you did, you should of course be responsible for the expenses.

"This has been explained in detail to you, and I have no time to carry this correspondence further. Steps must be taken immediately to collect the amount due from you.

"Yours truly,

"O. M. CARTER,

"Capt., Corps Engineers, U. S. A."

Q. (Handing witness paper) This is from the files of the department?

1829 A. Yes, sir.

Q. An original letter.

Judge-Advocate: (Reading)

"Savannah and Ocmulgee Line Steamers

"Savannah and Hawkinsville, Ga.

"Greencastle, Ind., December 9th, 1896.

"Mr. O. M. Carter,

"Savannah, Ga.

"Dear Sir:

"I received a letter from Mr. W. T. Gibson, of your city, today, telling me that he had a talk with you in regard to the diving outfit for the terms expressed by you.

"Please wait with the matter till I come to Savannah, which will be a short time, say from five to ten days. Will come to see you, and see if we cannot settle the matter. I am perfectly willing to pay what is just.

"Yours truly,

"ALFRED HIRT."

Q. (Handing witness paper) Is that also from the files of the office?

A. Yes, sir.

Q. The original received there?

A. Yes, sir.

Judge-Advocate: (Reading)

"Savannah and Ocmulgee Line Steamers

"Savannah and Hawkinsville, Ga.

"Greencastle, Ind., December 10th, 1896.

"Mr. O. M. Carter,

"Savannah, Ga.

"Your letter of the 8th received, and carefully noted.
1830 In reply: I never intimated that Capt. Burnett left diving outfit on his own accord at Lumber City. The conclusion in your letter is yours and not mine. The fact is, I did ask Capt. Burnette to leave the diving outfit at Lumber City for me. But he only left a part of it, and that part did me no good; and it was a week or ten days before I received the balance of outfit, expressed from Darien, Ga., to Abbeville for me. But I see plainly explaining the matter will do no good, although I made the statement to you at your office May 20th and you agreed to let me have the outfit till done, and more than that you demand $132.10 of me for that outfit so loaned to me as stated. And while you have the power to take the advantage of me; so I will send you my check for $132.10 in full of all your demands,—me or steamboat Santee.

"Yours,

"ALFRED HIRT."

Q. Was that check received with that letter?

A. Yes, sir.

Q. In whose favor was it made out?

A. I think it was made out in my favor.

Q. What was done with it?

A. I cashed the check.

Q. What was done with the money?

A. The money was used as a slush fund.

Q. Was the letter read by Capt. Carter when received?

A. No, sir; Capt. Carter——

Q. No; the letter enclosing that check,—that was addressed to Capt. Carter?

A. Yes, sir.

Q. Was the letter opened by him?

1831 Yes, sir.

Q. And the check handed you by him?

A. Yes, sir.
Q. And the letter turned over to you?
A. Yes, sir.
Q. Now, you may state what you did with the money.
A. I advised Capt. Carter to write to Capt. Goethals; I didn't think we could take the money,—that it could not be deposited,—that it was better he should write. Capt. Carter told me he had written to Capt. Goethals, and Capt. Goethals replied that the Auditor was very busy and he wanted to hear from the Auditor about it first; however, Capt. Carter told me I should use the money as a slush fund like we had used the slush fund before.
Q. Was there any letter to Capt. Goethals recorded on the books of the office?
A. No, sir.
Q. The previous amounts referred to in the correspondence which has been read while you were here, of the sum of $500 or more, was expended by you?
A. Yes, sir.
Q. (Handing witness papers) Explain those expenditures.
A. There were received $300 and a check for $246.29, on which there was a discount of 62 cents, leaving $245.67, giving a total of $545.67. There is still in the safe $13.38 for outstanding bills which have never come in, giving a total of $532.29. There is a receipt, No. 1, one telegram to Washington, 40 cents; one telegram from Washington 31 cents,—71 cents. No. 2 is the payroll for $391.66; attached to it is a receipt from Mr. Burnett to me, that I had given the money to him—two receipts, one for $299.29, and one for $92.37.
1832 Q. That pay-roll was made out as received from whom —from you?
A. Received of Alfred Hirt: "We, the subscribers, hereby acknowledge to have received of Alfred Hirt the sums herein specified opposite our respective names, being in full for our services at steamer Santee during the month of April-May, 1896, having signed duplicate receipts." That is, from the 26th of April to the 16th of May.
Q. You paid this amount in currency?
A. I paid it to Mr. Burnett. I have never seen the men.
Q. You gave the amount in gross to Mr. Burnett, or Capt. Burnett?
A. Mr. Burnett.
Q. And there are vouchers for that entire amount except

that small sum which you have named as being in the safe,—$13.00?

A. Yes, sir; $13.00 which is in the safe, and I have written to Mr. Johnson lately, who is on the Ocmulgee River, to find out about any outstanding bills.

Q. Mr. Hirt was shown these vouchers of expenditures?

A. Yes, sir; Mr. Hirt was in the office and I showed these to him.

Q. How was the amount of $132.10 ascertained, or arrived at, in making this charge against Mr. Hirt?

A. I could not tell. I have tried to find out and could not. I know in getting at the amount, Capt. Carter asked me how much it would be, and I didn't know, and Mr. Burnett got it. He took the pay-roll and figured it out, as he was in charge of the boat; he knew what men had been on the pay of the Government during the time they figured.

Q. And there is no statement or report on the files of the office as to how that $132.10 was arrived at?

A. No, sir; except that which there has accrued from the 25th of May to the 31st,—for the time that the boat was
1833 actually delayed here owing to the fact that the diving outfit had not arrived.

Q. As a matter of fact, was the boat delayed waiting for the diving bell?

A. I was told so.

Q. This $132.10 was to pay the expenses of the boat while so delayed?

A. Yes, sir; the men had been paid by the government, and this was to refund the Government for the time, for the expenses of the men.

Q. Having been paid for that time, their names could not be taken from the roll and put on the roll in the name of Mr. Hirt?

A. No; the idea was to reimburse the appropriation.

Q. Because it had been paid on the roll?

A. Yes, sir.

Q. The other roll was paid with money received from Mr. Hirt?

A. Yes, sir.

Q. But, having been paid out, it became a Government claim?

A. Yes, sir; I should state in the $132.10 is not only included the hire of the men, but includes the subsistence of the men during that time.

Q. What expenditures did you make out of that $132.10?

A. Out of that there were sundry expenditures; there was during that time,—in the Spring there was a storehouse that was fitted up, the property was rearranged, and property return blanks were printed and various other things which I cannot remember.

Q. Tell as many as you can?

A. I remember that there was a little repairs that were made for lamps—tubing for lamps, and got some bottles for testing,—No, boxes for putting samples of sand in, and a large jar was bought, and if I remember rightly, we made some experiments with the nigrosine process. Most of it was expended right in connection with overhauling the 1834 property.

Q. Did you reimburse any one for payments made by them?

A. Yes, sir.

Q. Who, and to what amount?

A. I reimbursed myself for $8.00 for subscription to the New York Sun for the office, which was taken out.

Q. Did you reimburse Capt. Carter in any amount?

A. Yes, sir.

Q. What amount?

A. If my memory serves me right, it was $12.45 or thereabout, for actual expenses which he paid the men whom he sent after the diving outfit. Capt. Carter paid that bill and this was a reimbursement for that bill.

Q. Did you pay him in money or in check?

A. I paid him a check.

Q. Have you got the check?

A. I don't know where it is now. I had it, but I don't know where it is now.

Q. How is it you haven't it?

A. I had it a few months ago.

Q. Were there any expenditures on the Angler out of that fund?

A. There were some minor expenditures, but I don't remember.

Q. Did you take vouchers for these expenditures?

A. I had receipts.

Q. From all?

A. From each party,—or a memorandum.

Q. Until the fund was exhausted?

A. Until the funds were exhausted.

Q. What have you done with the receipts?

1835 A. I have destroyed the receipts when Capt. Carter was relieved.

Q. You held them until he was relieved, or until after he left the City?

A. No, sir; before he left the City, when the things were packed up. I could not tell to the date whether it was after Capt. Carter left or before. There were a good many papers I destroyed them.

Q. About the time he was leaving here?

A. Yes, sir.

Cross-Examination by Mr. Rose:

Q. There was a boat by the name of the Santee that was sunk in the river?

A. Yes, sir.

Q. And the owners of that boat asked for the use of a Government boat to assist in raising it?

A. Yes, sir.

Q. When was that?

A. I forget.

Q. What year?

A. It was in 1886.

Q. 1896 you mean?

A. 1896.

Q. Capt. Carter sent a message to Washington asking authority to lend the boat to them?

A. Yes, sir.

Q. Before the boat was loaned, was a deposit made with anybody for the use of the boat?

A. Yes, sir.

Q. How much?

A. $300.00.

1836 Q. Who got the money?

A. I did.

Q. You personally?

A. Yes, sir.

Q. The men on the boat were taken off the Government pay-rolls and put on Mr. Hirt's pay-rolls for some time, were they not?

A. Not all.

Q. Some of them?

A. Mr. Burnett was not taken off?

Q. Mr. Burnett was not?
A. No.
Q. The others were?
A. The others were taken off. Mr. Burnett was carried on the regular Government pay-roll.
Q. Did Mr. Burnett have leave of absence at that time?
A. There is nothing on the record to show that he had leave of absence.
Q. At any rate some of the men on the Santee were paid out of that $300.00 until the $300.00 were used up?
A. I don't know whether the $300.00 were used up at that time. I know another deposit was made.
Q. The $300.00 was used up in that work by payment of the men?
A. Yes, sir.
Q. And then another deposit was made?
A. Yes, sir.
Q. Was that deposit made before or after the boat was returned? Was that payment of $246. in settlement when they got through with the boat, being the amount of the bills and pay-rolls?
A. It could not be.
Q. Could not?
A. No.
1837 Q. Then it was not, was it?
A. Yes, it was in a measure a settlement; in a measure, yes.
Q. Now, they sent the boat back?
A. They sent the boat back.
Q. When they took the boat was there a diving outfit with it?
A. I suppose so; I never saw it.
Q. You understood there was?
A. I understood it.
Q. You understood when the boat came back the complete outfit was not returned?
A. I understood so.
Q. For some days after the boat came back without the outfit, it was claimed by Capt. Carter that Mr. Hirt should pay for the use of the boat because the boat could not continue its work by reason of the lack of the complete outfit?
A. Yes, sir; that is right.
Q. Capt. Carter had some correspondence with Mr. Hirt in reference to getting the outfit back?

A. Yes, sir.
Q. The outfit was not sent back by Mr. Hirt?
A. Yes, sir.
Q. Capt. Carter sent somebody to get it?
A. Yes, sir.
Q. Paying the money for that out of his own pocket?
A. Yes, sir.
Q. And that $13.90 advanced by him was included in this $132.10?
A. Yes, sir.
Q. And the balance of it was the amount he claimed should be paid because they were unable to use the boat
1838 by reason of the lack of the outfit?
A. Yes, sir.
Q. That would make $118.20,—the difference between the $13.90 and the $132.10. You remember the receipt of this letter of December, enclosing this check for $132.10?
A. Do I remember that? The receipt of the letter?
Q. You heard me, didn't you.
A. Yes, I acknowledged receipt of the letter.
Q. You remember the receipt of it?
A. Yes, sir.
Q. You remember that there was a check in it?
A. Yes, sir.
Q. Who opened the letter?
A. Capt. Carter.
Q. And handed it to you?
A. The letter?
Q. Yes.
A. I don't know whether I got the letter right off, or not.
Q. Did you get the check?
A. I got the check.
Q. To whom was the letter addressed?
A. To Capt. Carter.
Q. To whose order vas the check made?
A. I don't remember; it was endorsed to me because I cashed it; the check may have been made out to my order.
Q. Why made to your order?
A. For the reason that Capt. Carter had the other checks made to my order.
Q. You handled all the money in connection with this matter?
1839 A. Yes, sir.
Q. What did you do with the money after you cashed the check?

A. Put it in the safe.
Q. What part of the safe.
A. The cash-drawer.
Q. All of it—all of the money?
A. I don't remember that now.
Q. All of the $132.10; that is what I mean now?
A. I had more money in the safe at that time.
Q. When you got that check cashed, you got $132.10, didn't you?
A. Yes, sir.
Q. I asked you what you did with it, and you said you put it in the safe. Did you put it all in the safe?
A. Yes.
Q. Every cent of it?
A. Yes.
Q. What day was that?
A. I don't remember.
Q. What was the month?
A. It must have been November or December,—the date of the check—No, I deposited the money.
Q. Where did you deposit it?
A. I deposited the money and afterwards put the money back in the safe.
Q. Where did you deposit the money?
A. I don't remember.
Q. To whose credit did you deposit it?
A. To my credit.
Q. Where did you keep your bank account then?
A. Merchants National Bank.
1840 Q. Did you ever have any other bank account than that?
A. Yes, sir.
Q. Whereabouts?
A. I said in the Merchants National Bank.
Q. Did you have a bank account at any other bank than the Merchants National Bank?
A. Yes, sir; in the Southern Bank, savings department.
Q. At that same time?
A. Yes, sir.
Q. Did you have any other?
A. No, sir.
Q. Which bank did you deposit it in?
A. The Merchants National Bank.
Q. Why did you tell me a minute ago that you didn't know where you deposited it?

A. If I said that, I certainly misunderstood you then.
Q. You deposited it there to your credit?
A. Yes, sir.
Q. And you drew on it the $13.90 check and gave that to Capt. Carter?
A. Yes, sir.
Q. When did you draw the next out?
A. The next time when I got my pay, I put the money in the drawer.
Q. You never drew a check on that deposit in the bank itself?
A. Not exactly; not that I can say that I paid out everything by check.
Q. Did you ever draw out the $118.20 that was left after payment to Capt. Carter of the $13.90, and put that in the safe?
A. I had the cash money in the safe.
Q. Did you draw a check for the $118.20?
A. No, sir.
1841 Q. And get that check cashed and put that money in the safe?
A. No, sir.
Q. How did you get the money you say you put in the safe, amounting to $118.20?
A. From my salary; I had money.
Q. When was that?
A. On the first of January; I had often money there.
Q. Just answer my questions, and we will get along all right. Can you tell how many days after the date of this letter that it was that you received the check, this letter being dated December 10th, 1896?
A. I don't remember.
Q. Within two or three days?
A. Two or three days.
Q. And how soon did you make a deposit to your own credit in this bank after you received the check?
A. That I don't remember.
Q. The same day?
A. I doubt it.
Q. The next day?
A. Probably.
Q. That would make the deposit, then, not later than the 15th?
A. Probably, yes.

Q. This being December 10th?

A. I would like to state here that often there were men that I advanced money on the pay-roll to, and when they paid me the money back the cash was put in the drawer, and I cannot go by that at all.

Q. Confine yourself to this, nov.

A. .I am sworn to tell the truth.

Q. You are sworn to answer my questions first. You
1842 put this check in bank not later than the 15th of December, then, five days after the date of this letter?

A. Yes, sir.

Q. Can you tell me the date you gave the check to Capt. Carter?

A. I don't remember.

Q. Have you any way of finding that out?

A. Yes, sir.

Q. When did you last see that check you gave to him?

A. It was several months ago when I saw that check.

Q. Last September during the investigation by the Board here?

A. I think it was.

Q. In whose hands was it then?

A. Capt. Gillette's hands.

Q. How did he get it?

A. I gave it to him.

Q. You gave it to him; have you ever seen it since?

A. I think I have.

Q. When did you see it last?

A. I don't remember.

Q. You say you put the money in the safe?

Q. Yes, sir.

Q. When you got your January pay,—your December pay, on the first of January?

A. I might and might not: I think I did.

Q. You think ou did?

A. Yes, sir.

Q. How soon after the first of January were you paid?

A. The first of January, I suppose.

Q. On the first?

A. Maybe on the 31st of December.

1843 Q. You were paid, then, sonetimes in advance?

A. That is not in advance.

Q. On the last day of the month?

A. Yes, sir.

Q. How were you paid—in what way,—by check or in cash?

A. Check or cash? Cash.

Q. Take the year 1896, in December how were you paid your December payment?

A. In cash.

Q. Who gave you the cash?

A. I cashed the check.

Q. Then you got a check first?

A. Check due for the pay-rolls.

Q. And you cashed the check and paid yourself?

A. Yes, sir.

Q. And then you put the money, on the 1st or 2nd of January, into the safe?

A. Yes, sir.

Q. At that time, did you call Capt. Carter's attention to it?

A. Yes, sir.

Q. And tell him it was there?

A. Yes, sir.

Q. Did you tell him why you hadnt put it in there before? You had had the money about 16 days then.

A. Yes, sir; Capt. Carter had written to Washington to Capt. Goethal's whether he could take the money.

Q. And because he had written to Capt. Goethals was the reason you did not put it in the safe, but left it to your own account?

A. No, sir; Capt. Carter told me,—told me to keep it 1844 in my account like the other amounts—

Q. He told you to keep that in your own account in the bank? Answer me yes or no.

A. I cannot.

Q. Did he tell you to keep that money in your own account in the bank after you put it there on the 15th of December?

A. He say "Here is a check, Mr. Sterly," the exact wording I cannot remember.

Q. Did you tell him you had put it to your own account in the bank?

A. I don't remember even that, but I remember this; that I had the money in the safe in cash, and Capt. Carter says you had better leave it there then.

Q. That was after the first of January?

A. It was after the first of January,—and until he would find out—I told him he should write to Capt. Goethals.

Q. You directed him to write to Capt. Goethals?
A. I asked him—Did not direct—suggested.
Q. You suggested to him to write to Capt. Goethals?
A. Yes, sir.
Q. Had you been carrying on this correspondence with Mr. Hirt before this time?
A. No, sir.
Q. You had written none of these letters to Mr. Hirt?
A. No, sir.
Q. None at all?
A. None; I signed a letter "O. M. Carter" and signed it "J. W. O. S.", but that letter was dictated by Capt. Carter.
Q. And you signed it because he was not there?
A. Yes, sir.
1845 What was your salary then?
A. $200.00.
Q. And had that been greatly increased from the time you came here?
A. Yes, sir.
Q. What was it when you first came?
A. $40.00 a month.
Q. And before that what was your salary—at Willett's Point?
A. I was land-sergeant and got extra duty pay.
Q. What was your pay per month?
A. My salary was $17.00 per month, and 50 cents extra duty pay per day.
Q. Making about $30.00 odd a month. You have heretofore testified that you went up with Capt. Carter in the year 1896 to New York?
A. Yes, sir.
Q. You remember testifying to that?
A. Yes, sir.
Q. How did you go?
A. By steamer.
Q. Direct from here to New York?
A. From here to New York.
Q. And how long were you in New York?
A. In New York,—stayed there one day.
Q. And how long was it before you came back—I mean how long were you in New York and vicinity?
A. Oh, I got there on the 4th of August, and left there on the 26th of September.
Q. And you went up on a pass?
A. I went up on a pass.

Q. Had you ever been up before on a pass?
A. Yes, sir.
1846 Q. When?
A. Nearly every time I went.
Q. Do you remember going up— Do you remember the name of the ship you went up in that time?
A. I don't remember; Capt. Carter may remember; he was in the same boat.
Q. Do you remember going up in 1895—the year before?
A. Yes, sir.
Q. On the Nacoochee,—that was the steamer?
A. I suppose it was on the Nacoochee.
Q. And what time of year was that,—in September?
A. Yes, sir; I think it was on the first of September.
Q. The first of September was Sunday?
A. Yes, sir.
Q. You went then on a pass?
A. Yes, sir.
Q. And you came back on a pass?
A. Yes, sir.
Q. Was Capt. Carter in this Country at that time?
A. No, sir.
Q. He had gone where?
A. He had gone to Europe.
Q. And do you know when he went?
A. When he went?
Q. Yes. How long before the first of September?
A. He left here on the 2nd of July, and sailed from New York on the 10th of July, and came back on the first of October.
Q. Came here on the 1st of October?
A. Yes, sir.
Q. You didn't see him then on that trip to New York?
1847 A. No, sir.
Q. Who relieved him, or was acting as disbursing agent, while he was away during those two or three months?
A. Capt. Goethals.
Q. What was the occasion of your visit North to see Capt. Goethals?
A. To go on duty.
Q. You at that time had charge of the pay-rolls and bills in the same way that you had had before and after, under Capt. Carter?
A. Yes, sir.